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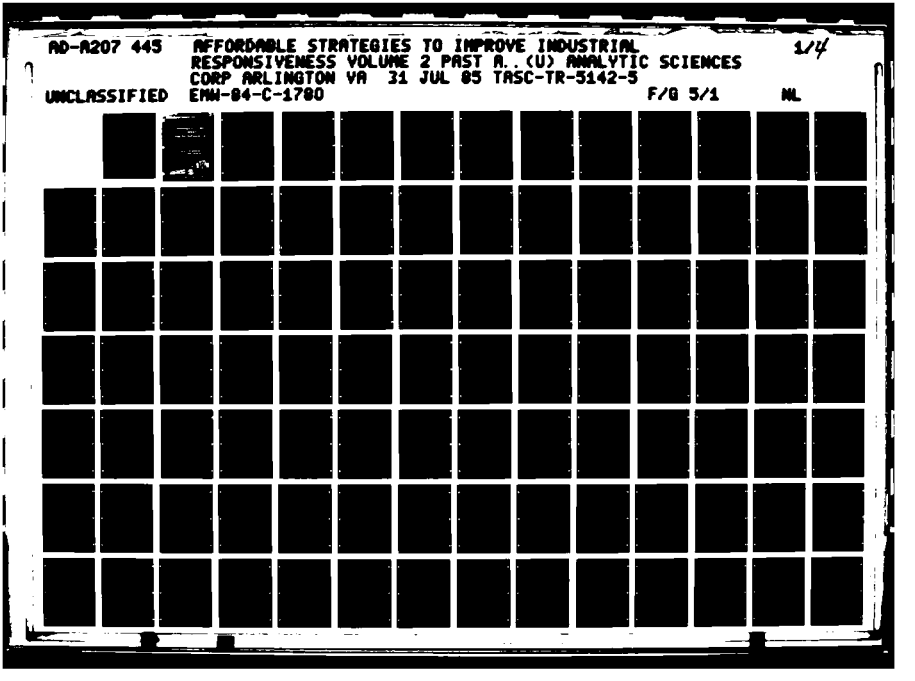

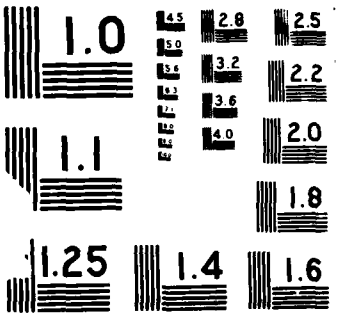
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AFFORDABLE STRATEGIES TO IMPROVE INDUSTRIAL RESPONSIVENESS

Volume 2: Past and Present Uses of Voluntary Agreements

JULY 1988

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OPTIONS AND COST OF IMPROVING INDUSTRIAL RESPONSIVENESS

VOLUME 2: APPROVED VOLUNTARY AGREEMENT REPORT AND SYSTEMS MODEL

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The views, opinions, and findings contained in this report are those of the authors. To the extent possible, it reflects current authorities, plans, and programs. However, it has not gone through formal inter-agency or intra-agency review, and should not be construed as an official Federal Emergency Management Agency position, policy, or decision, unless so designated by other official documentation.

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EXECUTIVE SUMMARY

ES.1 INTRODUCTION

This report describes the development of techniques to permit cooperative activities between business competitors, and between business and government, in the interest of national security. It describes the legislative history and current status of Defense Production Act authorities for these cooperative programs (termed "voluntary agreements") and analyzes the effectiveness of six past or present voluntary agreements. This report also presents a systems model of the processes for developing, approving, and activating voluntary agreements. The purpose of this report is to create a better understanding of how these authorities might be used to improve responsiveness of manufacturing and service sectors critical to national security. Keywords: Industrial production, management information systems, (SIS)

ES.2 BACKGROUND

In every mobilization of the 20th Century, the Federal Government has considered it necessary to allow industry to undertake cooperative actions that might not be permitted in peacetime. Industry has, in a sense, been delegated responsibilities that might otherwise be taken on by the government, to identify and solve production problems and to coordinate the provision of products and services. Specific activities included: identifying and solving production bottlenecks; agreeing on standardization of designs or production processes; exchanging parts or components to alleviate shortages

at a particular plant; and helping the government schedule component or material production and deliveries.

Some voluntary agreements allowed groups of firms to guarantee services collectively to the military (e.g., guaranteeing use of warehouse space or oil tankers when needed) or to take collective action to support government economic stabilization policies. For instance, financial institutions formed a voluntary committee to help restrain growth of debt and channel capital from non-essential to defense-related investments.

Many of these activities could expose participants to substantial risk of prosecution under the antitrust laws. For this reason, procedures have been established to protect participants in these voluntary programs. In World War II, the War Production Board, the Federal resource management agency, was authorized to certify the need for collective action to the Attorney General. Once certified, participants were immune from antitrust prosecution. Since 1950, a similar procedure has been authorized by Section 708 of the Defense Production Act of 1950. The authority was widely used in the Korean War and remains in force, albeit in modified form.

ES.3 LEGISLATIVE HISTORY OF VOLUNTARY AGREEMENTS

Ever since World War II, a steady pattern has been seen of narrowing the scope of these authorities and adding to the administrative burden on government sponsors and industry participants. When the Defense Production Act was debated during the summer of 1950, immediately after the invasion of South Korea, there was little opposition to the concept of allowing industry to form voluntary agreements. However, even

during that crisis, Congress put restrictions on the program. Agreements required the specific approval of the Attorney General (rather than mere notification) and President Truman and the Attorney General repeatedly stressed the need to protect the interests of small business and the competitive economy. This sensitivity was caused by the belief that past mobilizations had accelerated the centralization of economic power in the United States and damaged the interests of small business.

The pattern of restricting the scope of the voluntary agreements program has continued. In 1955, Congress prohibited new voluntary agreements unless they were narrowly focused on defense producers. The amendments also required the Attorney General to weigh the national defense benefits of an agreement against the anti-competitive impacts. These requirements were later repealed, but Congress amended Section 708 again in 1975, adding to the procedural and administrative burden of establishing, approving, activating, and operating a voluntary agreement.

These new requirements pose a major obstacle to revival of the voluntary agreements program. Although the new requirements are mainly procedural in nature, they could delay formation of new agreements. New disclosure requirements and limits on the scope of the antitrust relief granted to participants could also make industry reluctant to participate in a voluntary agreements program.

The new requirements are not so cumbersome as to preclude establishment of limited numbers of voluntary agreements. In peacetime, when time is not especially critical, it is undoubtedly possible to "muddle through" the paperwork requirements. Many of the requirements enacted in 1975,

indeed, were not new, but merely represented legal codification of longstanding administrative requirements. However, an emergency required rapid establishment of large numbers of voluntary agreements, the authorizing legislation would have to be modified.

ES.4 PAST IMPLEMENTATION

The authority for voluntary agreements was used widely during the Korean crisis. Within a year of the 1950 enactment of the DPA, 24 voluntary agreements had been established to help solve production or economic problems associated with the Korean mobilization. Ultimately, more than 70 voluntary agreements were formed during the Korean crisis and immediately afterwards.

However, although a small number of agreements were formed in the mid-1950s and later, the program hit its peak very shortly after it began. As emergency conditions abated, there was less apparent need for the program. The postwar decline in procurement contracts and the end of materials shortages and direct economic controls all reduced the number of problems voluntary agreements needed to address and the need for rapid, coordinated action. By the mid-1960s, the program was essentially inactive.

Postwar changes in national planning assumptions also reduced the perceived need for the program. In the mid-1950s, the United States discarded preparedness planning in favor of planning for no-warning, short duration nuclear conflicts. Programs such as voluntary agreements, which seemed to be applicable mainly to support sustained conventional conflict, suddenly had no apparent justification.

ES.5 POSSIBLE USES OF VOLUNTARY AGREEMENTS

Voluntary agreements should not be widely used in a peacetime, business-as-usual environment. Other methods exist to gain the benefits of industrial involvement in preparedness planning or in the solution of peacetime procurement problems. One particular method described in this report is the advisory committee, which can provide a focus for industry-government planning.

However, this does not suggest that voluntary agreements are limited to use in wartime. Other situations where the same type of coordinated action could be desirable include: surging production of weapons systems, munitions, or spare parts, either for U.S. force requirements or to re-supply an Allied nation; coping with serious peacetime production bottlenecks (such as those arising in 1979 and 1980); or unexpected disruptions of production, including strikes, sabotage, natural disaster, or interruption of foreign sources. The voluntary agreement could be a powerful tool whenever concerted action by industry could help solve national defense problems.

Indeed, the recent national emphasis on deregulation of industry and the new preparedness concept of planning for a wide range of emergencies suggest that voluntary agreements should assume a more central role in preparedness planning. Voluntary agreements could be a key component in an emergency preparedness strategy emphasizing private sector initiative in place of direct government intervention.

1. INTRODUCTION

This is the second in a series of reports in fulfillment of Contract No. EMW-84-C-1780 for the Federal Emergency Management Agency (FEMA). The purpose of this contract effort (as stated in the RFP) is:

- To review and analyze past and current uses of standby and voluntary agreements
- To identify and analyze likely possibilities for use of these concepts in additional manufacturing and service sectors
- To serve as a basis for developing recommendations for policy, statutory, or administrative changes necessary to permit greater use of standby and voluntary agreements, and thereby strengthen the Federal partnership with the private sector to improve our national defense preparedness posture.

This report provides the review and analysis of past and current voluntary agreements. It describes the development of the voluntary agreement approach since the World War I mobilization and uses of these agreements during and after the Korean War mobilization. It outlines the legislative history of the Defense Production Act (DPA) authorities for voluntary agreements and analyzes the current requirements for establishing and carrying out these agreements. This report also discusses six past and present voluntary agreements, presents their histories and the organizational responsibilities for their creation and operation, and analyzes their effectiveness.

To give a broader understanding of potential uses of voluntary agreements, the report also describes utilization of related authorities to establish industry advisory committees. We believe that the two techniques are similar and should be considered together. (Indeed, until the Korean War, no formal distinction was made -- either legally or administratively -- between the two.) We also discuss several recently-developed techniques that are related to voluntary agreements in some specialized applications.

The purpose of this discussion is to create a better understanding of how voluntary agreements might best be used to improve responsiveness in manufacturing and service sectors critical to national security. To provide this understanding, it is necessary to consider potential uses of agreements, political forces that constrain the application of these authorities, and alternative methods for accomplishing the same purpose. This better understanding will be applied in a later report (under this same contract) to identify and analyze the possible uses of voluntary agreements in ten specific industrial sectors.

This report also presents a systems model of the process for developing and activating voluntary agreements. It describes authorities and responsibilities that may come into play and specifies the appropriate roles of government agencies and private firms with respect to a voluntary agreement program. Although the law does not explicitly recognize the concept of a "standby voluntary agreement," the systems model considers the apparent process for establishing and activating such an agreement.

1.1 WHAT IS A VOLUNTARY AGREEMENT?

Because the concept of a voluntary agreement is prescribed by law, it does not pose the definitional problem faced in the earlier report under this contract on standby agreements.[1] Unlike the earlier case, there is no problem determining whether a past or present voluntary agreement fits within a strict definition of the term, because the nature of a voluntary agreement is spelled out in Section 708 of the Defense Production Act.

Nevertheless, it is useful to present a concise definition of a voluntary agreement. For the purposes of this study, we have defined a "voluntary agreement" to be:

> ...a voluntary association of two or more companies, granted relief from antitrust laws under procedures defined in Section 708 of the Defense Production Act of 1950, to engage in specified activities in support of defense preparedness or mobilization programs, that would pose an unacceptable risk of violation of the antitrust laws if carried on outside the procedures of Section 708.

This definition helps to establish the place of voluntary agreements in national preparedness planning. First, in keeping with a strict reading of the Defense Production Act, the definition excludes programs whose purpose is other than national security. Second, it postulates that voluntary agreements need not be limited to applications during mobilization, as long as the first criterion is met. Finally, it suggests an important perspective on the voluntary agreements program: voluntary agreements should be a last, not a first, resort. If another method can be found to accomplish the same purpose without raising antitrust issues, that alternate method should be used.

This logic suggests that voluntary agreements should only be established after careful planning. Waiver of the antitrust laws is a major action and should not be taken lightly. Before a voluntary agreement is proposed, the Government and industry should be certain that:

- The agreement has a clearly-specified objective
- The objective is important to accomplishing a national defense purpose, within the context of current preparedness planning
- No other method can be found (including a less-encompassing voluntary agreement) to accomplish the same purpose. (Note: these considerations are presently required under the DPA before the Department of Justice can approve a voluntary agreement.)

This does not suggest that industry should be excluded from the initial stages of preparedness planning. Clearly, the government would benefit from increased industry involvement in the development of preparedness plans and assessment of industry capabilities. By increasing industry involvement in the development of these plans, the Government can obtain the following benefits:

- More accurate information on industry capabilities and bottlenecks
- Identification of necessary remedial actions
- More realistic plans for utilizing industry during national security crises
- Improved understanding by industry of its role in mobilization.

However, other techniques may permit these advisory interchanges without the need for voluntary agreements. One particularly promising method -- the use of industry advisory committees -- is discussed in this report. The industry advisory committee process would allow most of the beneficial industry-government exchanges while avoiding the need to go through the formal voluntary agreement approval process. As mentioned earlier, as long as no potential antitrust problems are posed, there is no need to establish a voluntary agreement.

1.2 WHAT IS THE PURPOSE OF A VOLUNTARY AGREEMENT?

As was the case with standby agreements, the primary purpose of a voluntary agreement is to provide a more rapid and effective response to an emergency by bringing to bear commercial and industrial resources to help satisfy substantially increased requirements for goods and services. This purpose is served by granting participants relief from the risk of antitrust prosecution for actions taken under a voluntary agreement.

This report examines two distinct types of voluntary agreements. The first type -- related to production of defense materiel -- involved agreements established by contractors and subcontractors working on a specific weapons program (e.g., B-47 bomber) or a class of defense products (e.g., military trucks, cast armor, small arms ammunition). Those sponsored by the Army were called "integration committees," while the Air Force sponsored "production committees." This type of agreement was used, and would be used in the future, to improve industrial responsiveness by helping to solve production problems. They carried out some or all of the following functions:

- Facilitating the conversion of new producers by permitting a free exchange of production experience, data, drawings, etc.

- Standardizing components or production processes among different producers of the same item, either by the exchange of information or by agreement among the participants as to standard techniques and processes

- Alleviating component and materials shortages by sharing order boards, scheduling information, and supplies of parts, components, or materials

- Improving the scheduling of production by allowing contractors working on the same or similar items to coordinate their orders and deliveries

- Permitting manufacturers to allocate subcontracts, pool orders for materials, etc.

All of these methods resulted in improved responsiveness with minimal governmental involvement. Coordinating production maximized the individual capabilities of production facilities. (This technique can also be applied to sectors providing services to the Department of Defense. For instance, an integration committee of companies providing aircraft maintenance services was formed in the mid-1950s, with the same general thrust as production-oriented integration committees.)

It is more difficult to generalize about the uses of the second type of voluntary agreement, because each of these agreements was unique. During the Korean conflict, the Attorney General approved a number of "miscellaneous" agreements, made up of non-defense producers. Some of these agreements were, in reality, standby agreements such as those discussed in our

previous report. For instance, warehousemen's associations in three major metropolitan areas formed agreements to ensure that storage facilities would be available to military shipments. Similarly, ocean shippers established a voluntary agreement (which remains in effect) to coordinate provision of tanker capacity for defense shipments. (This agreement is discussed in Section 4.6.) The principal distinction between these types of voluntary agreements and the "pure" standby agreements appears to be the joint nature of the commitment. Whereas the standby agreement represents a unilateral agreement by a company to provide a specified product or service, these voluntary agreements represented collective agreements to make the specified type of service available.

A second group of "miscellaneous" agreements allowed industries to exercise voluntary economic controls. For instance, steel producers formed a voluntary agreement to coordinate steel pricing. Under the agreement, they agreed not to raise prices for certain types of steel without providing minimum notice to the government. Similarly, major lending institutions established a committee to provide guidance on credit policy in order to discourage non-essential lending, channel capital toward defense-essential producers and expansion projects, and restrain hoarding and excessive inventory growth. (This agreement is discussed in Section 4.2.)

These past uses give a perspective into the potential uses of voluntary agreements. Collective action by companies in an industry or service sector may support a broad range of preparedness goals, such as:

- Coordinating expansion of facilities, conversion of new producers, and scheduling of production to minimize production bottlenecks and improve the utilization of current production capacity

- Providing for timely and coordinated delivery of services from transportation, maintenance, and other service sectors
- Supporting preparedness goals through implementation of voluntary economic restraint programs
- Allocating civilian resources to defense applications and reallocating remaining resources for civilian use.

Significantly, all of these activities can provide for industry initiative to substitute for activities that the government might otherwise have to perform.

1.3 WHEN CAN VOLUNTARY AGREEMENTS BE USED?

Under the terms of the Defense Production Act, voluntary agreements can be used at virtually any time as long as they have a general purpose to improve industrial preparedness. However, it is our conclusion that voluntary agreements should not be widely used on a business-as-usual basis, when most objectives of a voluntary agreement could be carried out without raising antitrust issues in the first place.

This does not suggest that a voluntary agreements program would be limited to wartime use. The following sections discuss situations in which voluntary agreements might be used.

1.3.1 Use of Voluntary Agreements During Mobilization

During all-out mobilization, agreements might be needed for most critical weapons programs as well as for individual components or materials. Especially during the initial stages

of mobilization, voluntary agreements could help support military deployment, coordinate conversion of new producers, and harmonize production. Similarly, agreements to provide essential services or voluntary economic controls might be activated during mobilization. This would be the situation where use of voluntary agreements would most closely approach the World War II experience discussed in Section 2.2.

1.3.2 Use of Voluntary Agreements During Surge

There are many reasons why the United States might decide to surge production, either on an across-the-board basis, for selected systems, or even for individual munitions, spare parts, or components. Surge production could be ordered in anticipation of conflict, to maintain readiness during an "operational surge," to re-supply an Allied state during or immediately after a local conflict, to support limited conflict by U.S. forces, or to respond to rapid changes in technology or the international environment. Voluntary agreements could improve surge responsiveness by helping convert and qualify new producers, harmonize production schedules, coordinate delivery of parts and materials to multiple prime contractors, or coordinate support by infrastructure industries.

Two of the agreements examined in Chapter 4 were used to support "surge" production. In the early 1950s, deteriorating world events suggested the need for a rapid changeover to the B-47 bomber. Instead of confining production increases to Korean conflict requirements, the United States took preparatory actions for wider, general conflict. In order to accelerate B-47 deliveries, two new producers were established, and the B-47 Production Committee helped them attain rapid production capabilities. (See Section 4.3.) Similarly,

the Berlin Crisis and Cuban Missile Crisis in the early 1960s led to a decision to accelerate the changeover from the M-1 to the M-14 rifle. A third producer was brought into the program, and the M-14 Integration Committee helped this firm attain a more rapid production capability. (See Section 4.5.)

Other "surge" conditions that might benefit from voluntary agreements could include:

- Qualifying new producers, coordinating production schedules, and other activities to resolve shortages of a critical component or assembly in a case such as the 1973-4 tank turret casting shortage caused by surge production to replace Israeli Yom Kippur War tank losses
- Coordinating aircraft or ship maintenance and repair during a U.S. force deployment
- Coordinating production and delivery of spare parts or munitions during a "readiness surge" or limited conflict
- Establishing standards or joint industry proposals for relaxing test requirements or solving other production bottlenecks that prevent a surge of air-to-air missiles or other munitions
- Rapidly increasing production of cruise missiles or other strategic programs to respond to a world crisis or "SALT breakout."

Voluntary agreements might serve an important purpose as the "bridge" between surge and mobilization. It has been noted that surging production will not necessarily prepare industry for subsequent mobilization because surge is based on maximizing the utilization of current capacity. Whereas surge consumes resources, mobilization requires the creation or conversion of new resources. By itself, surge does not

provide for either expansion of capacity or conversion of new producers, either or both of which would be needed in order to increase production beyond the limited additional quantities surge can provide. Surge confronts the mobilization planner with a dilemma: preparing to mobilize could reduce near-term output by demanding resources that could otherwise be applied to surge, but, on the other hand, surging without preparing to mobilize could use up valuable time that could otherwise be used to prepare for the much larger subsequent production increases. Use of voluntary agreements could provide for the coordination that is otherwise lacking by improving near-term coordination, facilitating the activation of new subcontractors and producers, and identifying and solving production bottlenecks. Creating and activating voluntary agreements during surge could be important steps in improving preparedness.

1.3.3 Use of Voluntary Agreements to Alleviate Peacetime Bottlenecks

In the late 1970s, lead times for many defense systems increased sharply as military and commercial aerospace demand peaked simultaneously. Commonly cited capacity shortages included forgings, castings, titanium, bearings, and connectors. Although it would be necessary to exercise considerable caution in such an environment, voluntary agreements could be used to coordinate prime contractor demand, coordinate bottleneck industry production schedules and deliveries, or integrate production within the bottleneck industries to increase deliveries. These agreements could serve as an adjunct to Special Priorities Assistance and other direct intervention by the government.

1.3.4 Use of Voluntary Agreements to Avert Disruption

Unexpected events such as strikes, sabotage, interruption of foreign sources, or natural disasters could disrupt production of military end items or components. Disrupted production at a single key component or subassembly plant could affect production of an entire system, or, in some cases, many different systems. Voluntary agreements could be used to work around these problems by coordinating production schedules at plants producing similar items, scheduling deliveries, helping qualify new producers, or, in the case of sabotage or natural disaster, providing technical assistance to restore production at the damaged plant. Among non-producers, voluntary agreements could help coordinate restoration of utility services, reconstruction of transportation facilities, or prioritization of limited transportation, utility, or financial services.

1.3.5 Use of Voluntary Agreements For Economic Purposes

Voluntary agreements could be used for a variety of economic purposes related to national security. For instance, a voluntary agreement could be established among aerospace companies to develop a consolidated position toward foreign customer offset demands. Many of these applications would be extremely sensitive politically, especially during peacetime, and it would be especially important to structure such an agreement carefully.

1.3.6 Limits on Use of Voluntary Agreements

Because of the significance of granting antitrust protection, it is important that voluntary agreements not be entered into lightly. Voluntary agreements, especially for

some of the purposes described in Sections 1.3.3 and 1.3.5, could arouse political opposition. This makes it even more important that any agreement have a clearly defined need and objective, a strictly limited statement of purpose, and a limited duration.

Current legal requirements (discussed in Section 3.5) also represent a limit on widespread use. Some of the requirements are not new and some represent "common-sense" principles for administration. However, the total effect of the current legislation is to add a substantial administrative burden that sponsors and participants did not face during the Korean conflict. The requirements are probably not excessive if all that is desired is maintenance of a limited number of existing agreements. However, in a crisis, when timely activation of large numbers of agreements might be needed, the requirements would have to be changed.

1.4 WHAT IS THE DIFFERENCE BETWEEN VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES?

Advisory committees are closely related to voluntary agreements. Indeed, until enactment of the Defense Production Act of 1950, no formal distinction was made between these two types of organizations. In many situations, advisory committees represent an attractive alternative to voluntary agreements. Especially in peacetime, antitrust relief will be granted sparingly, and it may not be necessary to engage in activities that would require such relief. In these circumstances, advisory committees are probably a better vehicle for government-industry exchanges.

In past mobilizations, national-level resource management agencies have been organized on the basis of commodities and resources rather than a functional basis. That is, the War Industries Board (World War I), War Production Board (World War II), and National Production Authority (Korean conflict) established divisions to deal with a particular industry or resource (e.g., steel or aluminum industry). There were also functional organizations to deal with problems such as priorities, but the principal interface with industry was performed through the commodity divisions.

Mirroring this organization, industries formed advisory committees to present industry's views to and maintain liaison with the commodity divisions. This organizational structure provides one meaningful distinction between advisory committees and voluntary agreements. Whereas advisory committees were organized on the basis of individual industries, many of the defense production voluntary agreements were organized on the basis of an individual weapons system or broader weapons program.

The purposes of advisory committees and voluntary agreements were also different. Advisory committees generally were formed to provide improved government-industry liaison, to provide a forum for transmitting industry views to the government, and to allow the government to present proposals to industry spokesmen. Although advisory committees dealt with some operational matters such as priorities, allocations, and curtailment policies, they generally confined their role to maintaining liaison and providing advice to policy agencies.

Voluntary agreements, by contrast, were inherently involved in operational as opposed to advisory matters. The production-oriented voluntary agreements (such as Korean

conflict integration committees and production committees) were chartered to permit cooperation between competitors to solve production problems.

While voluntary agreements may have little place in a business-as-usual environment, the same may not be true for industry advisory committees. Especially for agencies such as FEMA and the Department of Commerce, advisory committees could perform a valuable peacetime function by assisting in development of mobilization and preparedness plans.

1.5 STUDY METHODOLOGY

The contract statement of work required a discussion of past implementation of voluntary agreements under the Defense Production Act of 1950. We broadened this scope in two ways. To present a thorough analysis of the development of voluntary agreements and to discuss the relationship between voluntary agreements and advisory committees, we decided it would be useful to discuss the development and application of this technique prior to the Korean conflict. This allowed us to show how the technique evolved, how it was applied in World War I and World War II, and how experiences in one conflict affected the development of subsequent voluntary agreement programs. More important, because Korea was a limited conflict of fairly short duration, the experience during World War II presented a better understanding of broad potential applications of the technique. Because this portion of the report was incidental to the principal purpose -- to describe the development and use of Defense Production Act voluntary agreement authorities -- we limited our review exclusively to secondary sources, principally the memoirs of key participants, after-action reports by government agencies, and postwar historical studies.

In preparing the legislative history of DPA voluntary agreements and the analysis of six past and present agreements, we relied heavily on contemporary documentation prepared by government agencies. This included: congressional hearings and reports, interagency correspondence on the programs, and the records of the agreements themselves. We also reviewed documents in the Office of Defense Mobilization/Office of Emergency Preparedness files at the National Archives and interviewed a number of retired government officials who were familiar with this program. Finally, secondary sources were consulted at the Library of Congress, National Defense University library, and the TASC industrial preparedness library.

1.6 REPORT ORGANIZATION

Following this introductory chapter, we present a brief overview of voluntary agreement-like activities during World War I and World War II in Chapter 2. Chapter 3 describes the legislative history and implementation of Defense Production Act authorities for cooperative industry activities.

Chapter 4 analyzes six past and present voluntary agreements. These are:

- The Voluntary Credit Restraint Program (Section 4.2)
- The B-47 Production Committee (Section 4.3)
- The Foreign Petroleum Supply Committee (Section 4.4)
- The M-14 Rifle Integration Committee (Section 4.5)

- The Voluntary Tanker Capacity Agreement (Section 4.6)
- The Munitions Industry Agreement and predecessor programs (Section 4.7).

In each of these sections, we describe the creation and functioning of the agreement, the reasons why the agreement was necessary, problems in its implementation, and its effectiveness in solving the problem that led to its establishment.

Chapter 5 discusses several present-day programs that are similar in some respects to voluntary agreements: small business manufacturing pools (initially authorized under Section 708 of the Defense Production Act but now under the auspices of the Small Business Act); research and development joint ventures; and contracting methods, such as leader-follower, that are similar in some respects to voluntary agreements. This chapter describes the legal basis for these programs and the limited possibilities they offer as alternatives to the more cumbersome voluntary agreement process.

Chapter 6 includes general comments on the feasibility and need for establishing voluntary agreements, Chapter 7 presents the voluntary agreements systems model, and Chapter 8 contains our general conclusions. The appendices reprint relevant legislative provisions and documentation concerning the voluntary agreements program. These include:

- Appendix A: Section 12 of the Small Business Mobilization Act of 1942, which authorized World War II committees similar to voluntary agreements
- Appendix B: a 1947 congressional resolution authorizing voluntary agreements for economic stabilization

- Appendix C: different versions of Section 708 of the Defense Production Act, the basic authority for voluntary agreements

- Appendix D: discussion of proposed 1975 amendments to Section 708

- Appendix E: Small Business Act provisions authorizing voluntary agreements for small business manufacturing pools

- Appendix F: excerpts from two voluntary agreement program reviews, prepared in 1956 and 1961 by the Attorney General

- Appendix G: documents issued by the Voluntary Credit Restraint Program.

ENDNOTES

1. See Winslow, Paul R. et al., "Options and Cost of Improving Industrial Responsiveness: Initial Approved Standby Agreement Report and Systems Model," The Analytic Sciences Corporation, TR-5142-4, 1985.

2. INDUSTRY-GOVERNMENT COOPERATION BEFORE 1950

During all three 20th century mobilizations -- World Wars I and II and the Korean conflict -- the U.S. government has found it necessary to consult with business, and to allow peacetime business competitors to collaborate with each other, in ways that would not normally be permitted. The present voluntary agreements program, which was initially authorized in 1950 for the Korean conflict, can indirectly trace its ancestry to the first improvised industry-government committees established in the early days of World War I. Methods of government-industry cooperation were more formalized in World War II, and the first integration committees -- important components of a present-day voluntary agreements program -- were used by the Army Ordnance Corps. Because World War II represented a more-nearly total economic mobilization than the Korean conflict, these coordinating committees were more widely used and addressed a broader range of problems than in the Korean conflict.

This chapter briefly traces the development of programs similar in nature to today's voluntary agreements and describes how they were used. This experience showed that cooperative efforts by industry could result in more rapid and substantially increased production (indeed, this cooperation is probably the most effective way to obtain these increases), but it also provoked criticism of industry-government collusion and increased centralization of economic power. This chapter also shows how these political problems contributed to the present-day constraints on the program.

2.1 INDUSTRY-GOVERNMENT COOPERATION IN WORLD WAR I

2.1.1 Initial Preparedness Measures

When the United States became involved in World War I, the nation had no experience in organizing the economy for the requirements of modern warfare. The demands for manpower and war materiel, and the associated need for economic controls to support war production, were out of proportion to those of prior conflicts. The Federal Government had not had experience organizing and managing major ventures, either of a military or a non-military nature. Whatever was done would set an important precedent for the future.

More fundamental questions were involved than just the method to mobilize the economy. The nature of business-government relations was in a state of flux. The previous decades -- the high-water mark of the Progressive and populist movements -- had been turbulent years for big business. The Sherman and Clayton antitrust acts had been enacted and the first "trust-busting" lawsuits had been filed. The first regulatory agencies -- including the Federal Trade Commission -- had recently, been established and there were differing views on the proper relationship between industry and government. Indeed, the nature of business-government relations had been the principal issue between Theodore Roosevelt and Woodrow Wilson in the 1912 Presidential campaign.

As the world drifted toward war, several groups began to suggest methods to increase U.S. industrial preparedness. The U.S. Chamber of Commerce was one early supporter of increasing business involvement in preparedness activities. Since its formation in 1912, the Chamber had been an advocate

of industry self-regulation, and its proposals for economic preparedness were consistent with this thrust. In December 1916, the chairman of the Chamber's Executive Committee on National Defense wrote to the duPonts, leading industrialists of the day:

> The Chamber of Commerce of the United States has been keenly interested in the attempt to create an entirely new relationship between the government of the United States and the industries of the United States. It is hoped that the atmosphere of confidence and cooperation which is beginning in this country, as shown by the Federal Trade Commission, the Federal Reserve Board, and other points of contact which are now in existence, may be further developed, and this munitions question would seem to be the greatest opportunity to foster the new spirit.[1]

The first governmental organization concerned with industrial preparedness was the Naval Consulting Board, established by the Secretary of the Navy in mid-1915. Through the voluntary efforts of industrialists, the Board's Industrial Preparedness Committee surveyed the munitions production capabilities of thousands of plants during 1916. The principal supporters of the Board's survey were also leading advocates of the view that preparedness should be guided through voluntary corporate action.

2.1.2 Establishment of the Council of National Defense

The Naval board was absorbed by the Council of National Defense, a cabinet-level committee authorized by an amendment to the 1916 Army Appropriations Act.[2] This Act established the council and provided for the establishment of an advisory commission.

The National Defense Advisory Commission (NDAC) was created in 1916, and served as the focus of economic mobilization for the balance of the pre-war period and the first few months of U.S. involvement in the conflict. Advisory commissioners were appointed to be responsible for:

- Transportation
- Engineering and education
- Manufacturing and munitions
- Medicine and surgery
- Raw materials
- Supplies
- Labor relations.[3]

President Wilson appointed Bernard M. Baruch, a well-known Wall Street speculator and Democratic party activist, to be commissioner of raw materials. Dr. Hollis Godfrey, president of the Drexel Institute, was appointed as the education and engineering commissioner. Howard Coffin, vice president of the Hudson Motor Car Company, was appointed commissioner of manufacturing and munitions. All three had been leading advocates of government reliance on businessmen in improving industrial preparedness.[4] Notably, Baruch had met with President Wilson in September 1915 to advocate formation of a "Business Men's Commission" to plan for economic mobilization.

Koistinen notes the importance of the Commission's foundation:

> The NDAC was actually a formalization of the procedures adopted by the Naval Consulting Board: industrial experts voluntarily

> donated their talents as public officials without surrendering their positions or incomes as private citizens. The precedent was an important one. It provided the wherewithal for industrialists to guide the process of mobilizing the economy.[5]

2.1.3 Initial Activities of the Advisory Commission

The procedure that guided U.S. industrial mobilization for World War I was set in motion at the Commission's meeting of January 8, 1917, several months before the United States entered the war. Baruch, the raw materials commissioner, stated that he had been making an independent study of the steel and metals industries and wanted to consult further with experts from these industries. He had been doing this privately, and could continue to do so, but desired approval of the commission to proceed to identify how resource industries could be organized to support preparedness.[6] According to Baruch's postwar report:

> The broad idea of the council was to serve as a center of contact between the Government and the industrial life of the Nation. The purpose was to make available to the United States the best thought and effort of American industrial and professional life for the successful prosecution of the war.[7]

According to Clarkson, the method advocated by Baruch began to take formal shape at a joint Council-Advisory Commission meeting held on February 12, 1917. He noted that this was "the first formal statement of the idea of direct contact with the chief men in industry."[8] The resolution provided for calling a series of conferences with:

> ...the leading men in each industry fundamentally necessary to the defense of industry in the event of war, at which conferences these

> men shall be asked to organize themselves so as to deal with the Council through one man or through a committee of not more than three men to whom the Council shall submit such problems as may affect such industries.[9]

Clarkson notes that this meeting was:

> ...the first definite step toward the system of committees and sub-committees which brought the Government into contact with the whole productive and distributive life of the Nation and which became the basis of the system of democratic control of industry through personal conference and discussion, which reached its mature form in the commodity sections of the War Industries Board in connection with the complementary committees from industry.[10]

Within a month, Baruch presented the outline of his raw materials committee structure, involving industry committees on leather, rubber, steel, wool, nickel, oil, zinc, coal, and spruce wood.[11] The committees sprang up quickly. By June 1917, Baruch alone had 33 committees reporting to him. They involved some of the leading men in industry: Elbert H. Gary, president of the American Iron and Steel Institute and Chairman of U.S. Steel, directed the steel committee; Arthur V. Davis, president of the Aluminum Company of America, headed the aluminum committee; and Ambrose Monell, president of the International Nickel Co., headed the nickel committee.[12]

Although the original purposes of the committees had been to "make detailed studies of their industries, to answer questions as to the amount of resources available to them, their productive capacity, how this might be expanded, and so on...no sooner were the cooperative committees formed than they moved from their role as statisticians to pursue such executive functions as arranging purchases and prices for

military departments on request and prorating production among themselves."[13] As early as the March 24, 1917 meeting, Baruch reported that he was in contact with copper, zinc, lead, steel, tin plate, and can producers to obtain supplies and negotiate quantities, prices, and delivery schedules on the government's behalf.[14]

There were, indeed, a large number of coordinating problems and operational issues that had never been experienced, such as:

- Coordinating activities of military purchasing bureaus to avoid competition among these bureaus for the services of the same suppliers (which would tend to place too much stress on limited capacity and bid up the cost of military items)
- Obtaining information on available capacity and the capability of likely conversion candidates
- Arranging for the conversion or expansion of productive capacity
- Setting priorities for production of military items
- Establishing reasonable prices for military items and raw materials.

In the absence of strong government leadership, the cooperative committees tended to take on the functions necessary to resolve the problems, as many of the early preparedness advocates had suggested.

2.1.4 Criticism of Advisory Commission-Industry Relations

It was not long before the role of the cooperative committees was being criticized extensively. Two distinct

criticisms were made. First, businesses excluded from the committees feared that they would get short shrift in the committees' deliberations. Second, both political and business people became concerned about concentration of power, conflict of interest, and the blurring of the distinction between public and private power.

In late June, an amendment was added in Senate committee to the Food and Fuel Bill that would make it illegal for a government employee (even an advisory one) to contract for supplies if he had a financial interest in the matter. Cuff notes:

> The measure was aimed directly at destroying the informal network of advisory committees; the impulse for it came essentially from a small number of Southern Democrats and Republican Progressives, men who were imbued with a strong antitrust sentiment and a strong suspicion that big business interests were gouging the public under the guise of patriotism.[15]

In their postwar memoirs, some of the key participants defended the original committee structure.[16] Nevertheless, after congressional approval of a compromise measure, and in response to continuing pressure about conflicts of interest in the war program, the committee structure was modified to a form somewhat closer to the later government-industry advisory operations.[17] On July 28, partly in response to the congressional pressure, a new War Industries Board (WIB) was created which, while still subordinate to the Council of National Defense, at least represented more centralized authority for industrial mobilization. Nevertheless, over the course of the summer, many committee representatives, believing that their position was threatened by the pending legislation, resigned or threatened to resign from their advisory positions.

2.1.5 War Service Committees

The Chamber of Commerce was, at this time, campaigning for establishment of a single procurement commission to supersede the War Industries Board and, to some extent, the fragmented military purchasing bureaus. The Chamber's campaign was motivated largely by the dissatisfaction of industries, especially "outsiders," with the present system.[18] Ultimately, the Chamber's efforts were consolidated with those of the government, and it was decided to reorganize the cooperative committee structure. The Chamber of Commerce was asked to sponsor formation of trade associations in industries not already organized in this fashion. In late September, the Chamber made such a request to industries and was empowered to certify a war service committee or to organize such a committee for industries unable to form a trade association.[19] To assist in this endeavor, the Chamber also sponsored a "War Conference of American Businessmen." At this conference, formal principles of the war service committees were established.[20]

Over the next few months, the cooperative committees were abolished, to be replaced in many cases by nearly-identical war service committees. Cuff comments that the program "acted as a hothouse for the luxuriant growth of a great number of committees, particularly among the least organized, small trades."[21]

2.1.6 Effectiveness of Committees

Participants in the World War I mobilization were unanimous in their belief that the structure ultimately established to coordinate mobilization -- War Industries Board commodity sections coordinating with industry war service

committees -- was an effective method of coordination with minimal red tape.[22] Baruch described how the committees and commodity sections worked together:

> ...It was the purpose of each commodity section to serve as a clearinghouse for information in its line. The Nation's demands for extraordinary production made it necessary in some industries to broadcast "trade secrets," which in normal times are cautiously guarded.[23]

Of course, no government agency could force a firm to surrender its trade secrets. Baruch attributed the WIB's success to "that quality of sentiment of devotion to the purposes of the war" on the part of patriotic industrialists.[24] Others suggested that self-interest and the ability to exercise substantial control over contracts, prices, and allocations had more to do with industry's enthusiasm for the program.

Questionnaires were used regularly to collect information on industrial capacity and, in some instances, monthly reporting procedures were established. Of course, the commodity sections did not limit their activities to collecting capacity information. They also solicited "information regarding the sentiments of the trades, their complaints, and their suggestions."[25] Whenever a critical issue arose, the commodity section would call a meeting with its war service committee, at which:

> ...working agreements were often reached... agreements regarding priorities, agreements as to the form and handling of a licensing system of distribution, agreements as to price-fixing, and other methods of control.[26]

These agreements would then be submitted to the appropriate WIB functional division for ratification. But, by the testimony of many key participants, the advisory committee meetings played the key role in making decisions.

Clarkson described the cooperative effort that resulted from the commodity section-war service committee arrangement:

> ...there was virtually no competition for orders among the efficient business concerns, for the problem then was not who would get patronage, but who must accept it... It was necessary for firms and corporations that had hitherto been business enemies to work together, to exchange information, to pool their resources, to lend labor and executives. Competition in price was practically done away with by Government action. Industry was for the time in what was for it a golden age of harmony.[27]

Wartime managers were particularly proud of the "slight administrative machinery" required to manage mobilization.

> The burden of preparation of information and the handling of an infinite amount of the detail of administration fell largely on the industries and their committees; the latter often maintaining (at an expense prorated among the industries concerned) large staffs and well-appointed offices to look after the details of liaison between industry and the commodity sections... The commodity sections were thus relieved of a vast mass of time-consuming and energy-exhausting detail. They were free to devote themselves to the outstanding problems of determining and enlarging resources, indicating maximum prices, uncovering and creating facilities, compiling and compacting requirements, speeding up industry, and informing Government in the ways of business.[28]

This had one distinct advantage, according to Clarkson, at the end of the war:

> When the end of the war came, it did not find American industry enmeshed in war-time laws and regulations which it would take years to shake off. On the contrary, about all it had to do was to relax its own rules and change its objectives from those of war to those of peace... The original feature of the War Industries Board was its successful, cooperative, democratic, self-control of industry for national purposes.[29]

Clarkson noted in a steel industry case study that the WIB steel division, with a total staff of less than 100, managed, through industry cooperation and self-regulation, to be essentially an "absolute industrial control agency." Virtually all the steel and iron requirements of the U.S. and Allied forces were allocated through this modest group. Contracts were allocated, prices were fixed, and requirements were matched with capacity.[30]

Considering the primitive state of U.S. industrial and governmental organizations to handle the unprecedented task of mobilizing to support an expeditionary force across a 3000-mile ocean, the World War I mobilization record was impressive. The conventional view of historians -- that World War I mobilization was inefficient and ineffective -- is simply not supported by the record. Summary statistics presented after the war by Benedict Crowell, Assistant Secretary of War, conclusively demonstrate that U.S. production was following the same pattern it would follow two decades later during World War II.[31] Production was accelerating rapidly by the time of the November 1918 armistice, and would have increased substantially in 1919, the third year of all-out rearmament, had Germany not suddenly and unexpectedly collapsed in 1918.

2.1.7 Postwar Implications

After their experiment with industrial self-regulation, wartime managers became what could be considered the first ardent advocates of "industrial policy," of a sort. Clarkson was particularly grandiose in his proposal:

> ... It is little wonder that the men who dealt with the industries of a nation...meditated with a sort of intellectual contempt on the huge hit-and-miss confusion of peacetime industry... From their meditations arose dreams of an ordered economic world... They conceived of America as "commodity-sectionized" for the control of world trade. They beheld the whole trade of the world carefully computed and registered in Washington, requirements noted, American resources on call, the faucets open or closed according to the circumstances. In a word, a national mind and will confronting international trade and keeping its own house in business order.[32]

Koistinen quotes an August 1918 article by Chamber of Commerce president Harry A. Wheeler to the same effect:

> Creation of the War Service Committees promises to furnish the basis for a truly national organization of industry whose proportions and opportunities are unlimited... The integration of business, the expressed aim of the National Chamber, is in sight. War is the stern teacher that is driving home the lesson of cooperative effort.[33]

Indeed, although the WIB structure and Council of National Defense were dismantled after the war, the WIB precedent of industrial self-regulation was used 15 years later, during a different type of emergency, when President Roosevelt established the National Recovery Administration (NRA) as one of his first economic recovery agencies.[34] The NRA authorized

antitrust immunity for industries to adopt voluntary codes, to set rules as to prices, work hours and standards, and similar matters in an effort to reverse what its sponsors saw as a dangerous deflationary cycle and over-production brought on by predatory competition. However, the NRA was ultimately declared unconstitutional, and the WWI-type industry associations were on the defensive throughout the 1930s under a fresh onslaught of antitrust litigation.

Another more long-lasting legacy of the WIB was the trade-association movement, which it initially sponsored. In 1914, there had been only 800 trade associations in the United States, whereas by 1919 there were 4000.[35] During the 1920s, the Federal Trade Commission conducted several investigations of trade association activities. Several cases concerning trade associations went to the Supreme Court, resulting in a workable arrangement with strict limits on the activities of associations.[36]

One troubling question about the activities of the war service committees was the impact of the antitrust laws on these organizations. For the most part, memoirs of participants treat the question delicately. Clarkson notes:

> Theoretically, much of this was in violation of the antitrust laws, and at times the Department of Justice was much perturbed. Even the industries themselves were fearful that they might be punished for doing the Government behests.[37]

Separately, he noted:

> One of the thinnest and most treacherous spots was the reconcilement of the virtual

> pooling of production and orders absolutely essential to the coordination of industrial potentialities with the inhibition of combinations by the antitrust laws.[38]

However, Clarkson is not especially informative as to the methods used to avoid antitrust difficulties. Johnson is considerably blunter in his description:

> We did not repeal the Anti-Trust Acts. We simply ignored them. Competitors pooled their resources, their trade secrets, their facilities. Industries organized themselves into groups... It worked.[39] (Emphasis in original.)

This success was not without subsequent cost. The interwar years saw a renewal of antitrust actions directed at trusts and monopolies. One case in particular, the Madison Oil Case, was aimed in part at WWI type price-fixing arrangements. The unfavorable decision dismayed mobilization planners. In a speech before the National Industrial Conference Board in 1940, former WIB chairman Bernard Baruch stated:

> After the Wisconsin oil decision, there is grave doubt as to the clearance that a committee of industry can get from the anti-trust act. When the Defense Commission was first announced, the only public statement I made regarding it was that they had to clear the committees of industry if they wanted to get the fast, quick work that is necessary.[40]

Indeed, a substantial amount of the criticism subsequently directed at World War I mobilization, and at trusts and monopolies in general -- by the Nye committee, the congressional Temporary National Economic Committee, and the Justice Department, among others -- was directed at the atmosphere of industry-government cooperation and industry

self-regulation that had been fostered by the World War I mobilizers. The belief that a conspiracy of profiteers had led the U.S. into the war, and had then been granted unilateral authority to determine their own economic fates in the war, played no small role in the growth of strong isolationist sentiment in the early and mid-1930s. As the U.S. became prepared for involvement in World War II, it was evident that a more workable arrangement for industry-government cooperation would be needed.

2.2 INDUSTRY-GOVERNMENT COOPERATION IN WORLD WAR II

As the U.S. moved toward direct involvement in World War II, mobilization planners recognized that the scale of the mobilization effort would require improved methods of industry-government cooperation and coordination. In addition, after the post-World War I prosecutions and the experience with the National Recovery Administration, planners also recognized the need for more formal procedures to avoid antitrust problems.

The problem was summarized in one publication:

> The Government had to learn and learn quickly the requirements of the armed services; the capacities of industrial facilities; how to increase production of raw materials; how best to speed the manufacture of finished products by industry; how to anticipate the effect of this activity upon manpower supply, and at the same time, how to keep the national civilian economy functioning as smoothly and efficiently as possible.[41]

The need for rapid curtailment, expansion, and conversion brought a large number of industry personnel into the government service. However, this was not enough:

> It soon became clearly evident that Government had to talk directly with industry executives and technicians. Government had to know, and know quickly, what the conditions in a given industry were, what facilities were available, what the possibilities of expansion or conversion were, and what the maximum capacity of production was.[42]

Ultimately, a large structure of industry advisory committees was established. Nearly every war agency used industry committees in some form for consultation and coordination. Early in the mobilization, the Army developed a new form of advisory committee, known as an integration committee. Integration committees were regarded as a form of advisory committee and were authorized by the same legislation and procedures. The principal difference was their direct involvement in advising government purchasing bureaus. Whereas advisory committees advised national-level, non-military agencies on issues such as curtailment, expansion, and conversion problems, the integration committees assisted procurement agencies in solving production problems.

The following sections discuss the World War II operations of both advisory committees and integration committees.

2.2.1 Establishment of Advisory Committees

At the beginning of prewar preparedness efforts, industry was reluctant to get involved in activities that might expose them to antitrust prosecution. (In a broader sense, industry was also reluctant during most of the preparedness period to increase its involvement in rearmament, especially if these efforts would come at the expense of their commercial markets.)[43]

Shortly after the spring 1940 invasion of France, President Roosevelt reactivated the World War I National Defense Advisory Commission, authority for which had remained on the books, to coordinate initial preparedness activities. On June 26, 1940, the Attorney General met with the Commission to discuss the application of the antitrust laws to the rearmament program. He asked that each case potentially involving antitrust violations be certified by the NDAC. If NDAC certified the national defense need, he promised protection from the antitrust laws.[44]

The offer of antitrust relief was quite broad. Not only were corporations protected for actions taken during rearmament at the request of the government, but they were also given some protection, at least for the duration of the conflict, against antitrust suits filed for actions unrelated to the mobilization. The NDAC wanted this protection because of the need for industry to concentrate its attention on rearmament; it did not want the threat of antitrust actions to deflect attention from what it perceived as higher national priorities. Donald Nelson, a member of the NDAC and later chairman of the War Production Board, stated:

> It was not the intent of the Commission to protect industry against anti-trust suits or to interest ourselves in such matters. We had a one-track mind, and over that track ran the production express which couldn't afford to be late.[45]

Committees were needed initially for a variety of reasons: to serve as a means of gathering information on industry capabilities; acquainting industry with government plans and requirements; and obtaining industries' views on proposed government plans and programs. Cooperative action by

industry was also necessary, before the war, to ensure cooperation with the government's initial requests for voluntary curtailment of non-essential production. Curtailment was needed to free up resources for military production, but one of the principal concerns of industry was the risk of forfeiting existing markets to competitors who were not similarly curtailing production.

As pre-war preparations continued, a more formal procedure was desired. John Lord O'Brian, General Counsel of the Office of Production Management (which had by then replaced the Advisory Commission), requested the opinion of the Attorney General, who replied on April 29, 1941, establishing the general principles that would guide subsequent advisory committee activities. Attorney General Robert Jackson summarized his views on cooperative industry-government actions. Efforts to mobilize American industry--

> ...if accomplished by private contract or arrangement within an industry and carried on for private advantage probably would constitute violations of the antitrust laws. On the other hand, it is obvious that, in the present emergency, acts performed by industry under the direction of public authority, designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws.[46]

Monsees, a member of the War Production Board's (WPB's) office of industry advisory committees (IACs), summarized the policies established by the Attorney General:

- "Meetings of industry with representatives of the government are not illegal
- "Questions as to the need for a committee and methods of selecting members are the

sole responsibility of the government agency concerned, but such committees must 'be generally representative of the entire industry'

- "Industry committees should confine their work to collecting and analyzing information and making recommendations to government; they may not determine policies for industry, nor compel anyone to comply with any request or order made by a public authority

- "All requests for action on the part of any units of an industry must be made by government and not by the industry committee

- "Requests for action, such as allocation orders, can be made only after the general character of the action has been cleared with the Department of Justice

- "Acts committed in compliance with the specific requests of a Government agency and in accordance with the approved procedure are not viewed by the Department of Justice as constituting a violation of the antitrust laws

- "The Department of Justice reserves complete freedom 'to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.'"[47]

These decisions rejected the specific advice of World War I mobilization czar Bernard Baruch, who had advocated establishing a commodity section-industry committee structure like the World War I program, with the committees having authority to deal in policy and operational issues such as pricing and allocations.[48] The framework developed by the OPM General Counsel and the Department of Justice established a much more limited, but still important, role for industry,

leaving the ultimate control of mobilization policy in the hands of the government and confining industry to an advisory role.

This approval of advisory committees set the scene for a reorganization of OPM, which took place on June 24, 1941. The former functional organization was abolished and a network of commodity sections was established within OPM, each responsible for a particular material. This provided a focus for the advisory committees, which proliferated around these sections, culminating in an organization similar to Baruch's model, even if the authorities of the industry committees were more constrained.[49] This structure provided a focal point for each industry to deal with the government and allowed smooth communications and decisions about curtailment and conversion.[50]

The Japanese attack on Pearl Harbor added new urgency to the production effort, and mitigated a few of the antitrust problems. No longer was the government relying heavily on voluntary industry curtailment to expedite conversion; now, industries would be curtailed and converted by government dictate. Thus, while the need for industry to consult with government did not abate -- indeed, from industry's point of view it may have increased -- the need for voluntary concerted actions by all members of the industry declined somewhat. Based on the new urgency, the OPM General Counsel wrote again to the Attorney General, proposing several procedural modifications to accelerate the formation and operations of advisory committees.[51]

In June 1942, Congress established a statutory basis for advisory committees when it approved the Small Business Mobilization Act (also referred to as the Smaller War Plants Act -- Public Law 77-603, Ch 404 56 Stat. 351). Section 12 of

the Act provided that the Chairman of the WPB (successor to the Office of Production Management) could protect corporations against antitrust prosecution by certifying to the Attorney General that the actions in question were taken at his behest and were in the public interest. (See Appendix A for the text of Section 12.) The Chairman of the WPB was directed to consult with the Attorney General before certifying the committees, but the Attorney General had no discretion to disapprove proposed actions. This arrangement continued through the end of the war.

2.2.2 Functioning of Advisory Committees

After the attack on Pearl Harbor, advisory committees proliferated. By January 1943, the War Production Board alone was served by approximately 500 industry advisory committees.[52] The Board established a special office to help commodity divisions establish IACs.[53] The commodity division director appointed a Government Presiding Officer, who then submitted a list of proposed members to the Office of Industry Advisory Committees. The list was supposed to be reasonably representative of the industry, in terms of size of the member company, location, product segment, and trade association affiliation. Representation could not "differ unreasonably" from the makeup of the industry.

Each committee required a charter and statement of purposes, which limited the committee's activities to a specific set of problems. The Government Presiding Officer prepared the agenda for all meetings and submitted it to the Office of Industry Advisory Committees, which formally called the meeting. Although the government normally set the agenda, any three committee members could submit a proposed agenda and request that a meeting be convened.

Meetings were required to follow the agenda closely, and minutes or a verbatim transcript were kept for circulation to other WPB divisions, other government agencies, and all companies in an industry, whether represented on the IAC or not. Thus, although attendance was strictly limited to government representatives and committee members, decisions and recommendations were widely circulated.

Although the need for industry consultation was generally accepted, there was constant concern about possibilities for collusion and favoritism. Congress -- particularly the Truman Committee -- did not look with favor on big business-government interrelationships. IACs, and the associated phenomenon of "dollar-a-year-men," were viewed with considerable suspicion.[54]

In April 1943, O'Brian, now the General Counsel of the WPB, sent a letter of caution to WPB personnel:

> War Production Board personnel must realize that departures from the limitations placed on the use of Industry Advisory Committees and 'task groups' and on the approved procedures governing their conduct may result in prosecution of members of industry and others under the antitrust laws under circumstances similar to those present in the Madison Oil Case. It is my wish to permit the freest participation by members of industry with the WPB which is in keeping with my agreement with the Attorney General respecting this matter, and it is my earnest hope that neither ignorance of the limitations placed by that agreement on such participation nor disregard of such limitations will lead to antitrust prosecution following this war such as those which resulted from participation by industry with Government agencies in the absence of such agreements during the first World War. It is for these reasons that the...rules are established and should be scrupulously adhered to.[55]

In addition to the WPB, virtually every other war agency used IACs. This structure was used by the Office of Price Administration, the War Manpower Commission, the War Food Administration, the Petroleum Administration for War, the Office of Defense Transportation (which established an extensive network of local and regional committees), the Bureau of the Budget (which used committees to provide advice on government questionnaires and requests for data), the Foreign Economic Administration, and the Board of War Communications.[56] In addition, the War Department widely used this technique, in the form of industry integration committees.

2.2.3 Establishment of Industry Integration Committees

From the very outset of war preparedness efforts, the War Department assumed that industrialists would consult freely with the government and among themselves. In a 1939 article describing the educational orders program, Colonel H. K. Rutherford, supervisor of this program, stated:

> It is hoped that the various manufacturers receiving educational orders for the same item will confer freely with each other in carrying out their contracts... In the interest of a sound and comprehensive mobilization plan for industry, much is to be gained by exchange of information. During the [first] World War, committees were formed of manufacturers engaged in the production of similar items and their pooling of information had no small influence in speeding up the entire program.[57]

In the autumn of 1940, the Ordnance Corps established 29 engineering advisory committees, each to deal with a specific form of ordnance -- the tank committee, gun forging committee, bomb fuse committee, etc.[58] Initially, the committees were intended to serve the same purpose as the

educational orders program[59] -- to give manufacturers lacking in experience an opportunity to solve engineering problems. Later, they also made suggestions for improvements in design or manufacturing techniques. These committees later became the first integration committees.[60]

One of the first concrete steps leading to the ultimate integration of industry was a 1940 agreement between two rifle manufacturers to use identical machinery in the new plants they were building. These two firms were soon joined by other rifle manufacturers, and the technique spread to manufacturers of bullets, ammunition belts, and other products.[61]

In March 1942, the Ordnance Corps called together the seven prime contractors for carbines to discuss production problems and to work out procedures for exchanging ideas, raw materials, and machine tools. This committee became the first integration committee, closely followed by a mechanical time fuse committee. The carbine committee was initially chaired by a Lieutenant Colonel assigned to the Ordnance Corps, and a contractor representative served as assistant chairman. At first, the committee met every month or six weeks, although sub-groups met more often. Recommendations were forwarded to the Chief of Ordnance and the Springfield Armory for review and approval. The committee first concerned itself with issues such as:

- Engineering changes to improve the rifle or production processes
- Standardization of production and inspection procedures
- Joint purchasing of alloy steel.[62]

As mobilization progressed and materials shortages threatened the production program, the integration committees facilitated government efforts to improve scheduling of production. Under scheduling procedures, inventories were minimized and supply of materials and components was correlated with production schedules to make sure that every manufacturer had "just enough, just in time." Scheduling avoided excess inventories in one plant while another plant lacked for the same material. Scheduling could only work if companies believed that they could obtain the parts and materials when they needed them. The integration committees were important in coordinating the day-to-day scheduling operations.[70]

While the committees had almost unlimited authority to resolve intercompany problems, they were otherwise limited to collection and correlation of manufacturing data and the submission of recommendations. Policy decisions were deferred to the Ordnance Corps.[71] However, it is difficult in such circumstances to identify where "intercompany assistance" leaves off and "policy" begins. For instance, committees were given exemptions from the allocation rules to permit them to implement their own allocation decisions.[72]

At the peak of mobilization, in June 1943, 131 committees were operating -- 75 on ammunition items, 15 on small arms, 26 on tanks and automotive equipment, and 15 on artillery items. As of V-E Day, long after procurement levels had begun to decline, 82 committees still operated, covering 162 types of equipment and combining the efforts of more than 1,500 contractors and 10,000 subcontractors.[73]

2.2.5 Effectiveness of Industry Committees

World War II, being a more protracted and more-nearly-total mobilization, provides a better test of the possible benefits of advisory committees and integration committees than the Korean conflict, which occured in an atmosphere more nearly approaching "business as usual." By all accounts, the World War II committees were invaluable in providing information to the government, improving coordination between government and industry and among contractors, and facilitating decisionmaking. In many respects, the committees substituted, probably in a more cost-effective and efficient fashion, for increased government regulatory authority. Many functions performed by integration committees could have been carried out -- undoubtedly less efficiently -- by the government. Commentators on industry advisory committees universally believed that they promoted effective decisionmaking and, after an initial period of some suspicion, were well-accepted by business officials who were not favorably pre-disposed toward government.[74]

Integration committees were also viewed in a positive light by the sponsors. The official Army history of the Ordnance Department called them "among the most successful devices Ordnance developed to break bottlenecks, speed production, and promote cooperation among contractors."[75]

Campbell was even more enthusiastic:

> Much more was accomplished than anyone, myself included, had a right to expect. Ordnance could not have met its constantly changing and fluctuating requirements without the extreme flexibility afforded by this grouping of contractors. Specifically, the various integration committees made it possible to turn out thousands of units above and beyond individually rated plant capacities.

> By integrating all manufacturers producing a particular item, the excess component capacities, raw-material stocks, machine tools and know-how of one company were utilized to offset deficiencies in other companies which, in turn, gave reciprocal assistance to the best of their ability. In short, the integration of industrial groups permitted maximum production with minimum facilities. It made possible the fullest utilization of existing equipment to its fullest possible extent in the plants of prime contractors and subcontractors alike.[76]

2.2.6 Related Efforts

Two related programs utilized to harness private sector initiative during World War II are also worth brief mention. These were Machine Tool Panels, sponsored by the Army Ordnance Corps, and Labor-Management Committees, sponsored by the War Production Board.

Machine-tool panels were formed by the Ordnance regional offices to help reduce the need for new machine tools, which were in extremely short supply during the early phases of the production buildup.[77] Representatives of the machine tool industry were appointed to these committees (on a part-time basis) and helped the government and producers identify ways to limit demand for new machine tools through such methods as:

- Identifying idle machine tools that could perform the same operations
- Suggesting changes in production methods, product specification, or tool utilization
- Identifying opportunities to subcontract critical operations
- Establishing procedures to inspect and repair surplus equipment.

Ultimately, these efforts were responsible for a significant reduction in the initial requirements for machine tools that were in short supply.

Labor-management committees were proposed by WPB Chairman Donald Nelson as a means to get representatives of labor and management involved together in identifying and solving production problems within individual plants.[78] Specifically, the intent was to capitalize on suggestions from workers, normally excluded from "management" issues. Initially, many labor and management representatives were suspicious of the suggestion: management feared that labor might usurp on management prerogatives or attempt to use the committees as a forum for raising grievances, while labor feared management would use the committees to impose production line speed-ups. Nelson stressed that the committees should not deal with "labor-management" issues (union representation, bargaining, or grievances) but should confine themselves to improving production efficiency. Ultimately, the technique was widely accepted -- Nelson reported in his memoirs that more than 1800 factories had established labor-management committees within a year after he suggested the idea.

Many of the ideas were relatively mundane (e.g., truckers suggesting ways to cut down on delivery times, maintenance workers suggesting methods of improving maintainability of machinery). However, the aggregate results were impressive. A survey of approximately 1,300 suggestions adopted late in 1944 and early in 1945 showed total savings in excess of 15,000,000 man-hours of labor. Some of the proposals were useful enough that they were disseminated throughout industry.

As described, the labor-management committees, quickly discarded after the end of the war, were remarkably similar to the "quality circles" that became popular in the 1970s. These two techniques provide an interesting insight into the variety of voluntary techniques, other than formal voluntary agreements, that might be implemented to take advantage of individual initiative during an emergency.

2.2.7 Postwar Fallout

As was the case in World War I, the participants and historians writing during and immediately after the war believed that they had discovered a useful peacetime tool for establishing orderly industry-government relations. Monsees, for example, thought that the experience with industry advisory committees had permanent application to public administration problems. Nelson, similarly, believed that WPB-government relations provided a model for peacetime business-government cooperation. Campbell, from a narrower perspective, believed that the "industry-ordnance team" should remain intact in order to maintain a continuing high level of preparedness.

In a sense, the "military-industrial complex" that evolved in the postwar years represents a partial fulfillment of these hopes, although applied only to a single type of government activity. However, the continuing criticism of these government-industry cooperative ventures, indeed the term "military-industrial complex" itself, reflects the difficulty of maintaining collaborative wartime relations once the emergency has passed. The reader of almost any day's newspaper can see how cooperative actions accepted under emergency conditions are subjected to increased criticism in peacetime.

Although there were no postwar prosecutions or congressional investigations of "profiteering" to compare to the experience after World War I, there was, and continues to be, a great deal of criticism of the concentration of war contracting -- and the perceived concentration of economic power -- stimulated by World War II.[79] Although no accusations were made specifically against the advisory committees and integration committees, it was widely felt that the World War II mobilization had led to further centralization of economic power. By the time of the Korean conflict, less than a decade later, small business advocates had resolved that the concentration of contract awards and relatively easy interchanges between big business and government should be much more tightly controlled. So, although the system established before the war was effective in mobilizing productive resources, it provided a model that was not to be repeated.

ENDNOTES

1. Quoted in Koistinen, Paul A.C., The Military-Industrial Complex: A Historical Perspective, Praeger, New York, 1980, p. 25.

2. This law remains in force, and is found in Section 1 of Title 50, U.S. Code (50 U.S.C. 1 et seq.) This authority was used by President Roosevelt in 1940 to establish the first of the pre-World War II mobilization management organizations, the National Defense Advisory Commission.

3. Baruch, Bernard M., American Industry in the War: A Report of the War Industries Board, Prentice-Hall, New York, 1940, p. 18.

4. See, e.g., Koistinen, op. cit., pp. 26-28, and Cuff, Robert T., "Woodrow Wilson and Business-Government Relations During World War I," The Review of Politics, No. 3, 1969, pp. 386-388.

5. Koistinen, op. cit., p. 27.

6. Martin, Dr. Franklin H., Digest of the Proceedings of the Council of National Defense During the World War, Government Printing Office, Washington, 1934, pp. 512-513, and Clarkson, Grosvenor B., Industrial America in the World War - The Strategy Behind the Line 1917-1918, Houghton Mifflin, Boston, 1928, pp. 26-27. Martin was the NDAC commissioner for medicine and surgery, and Clarkson was secretary (later director) of the commission.

7. Baruch, op. cit., p. 19.

8. Clarkson, op. cit., p. 28.

9. Ibid.

10. Ibid., p. 29.

11. Ibid., and Martin, op. cit., p. 513. Spruce wood seems like an odd material to be included in such a list, but was, in reality, one of the principal critical materials during World War I. It was a critical

component of aircraft structures and propellers. See Stockbridge, Frank Parker, Yankee Ingenuity in the War, Harper and Brothers, New York, 1920, pp. 38-60, for an interesting discussion of efforts to solve "critical materials" problems in World War I aircraft production involving the following materials: spruce wood, castor oil, Irish linen, and glue.

12. Cuff, op. cit., p. 389. In July 1917, a listing of the committees and committee members supporting the preparedness effort filled 19 pages of very small print in the Congressional Record. (Congressional Record - Senate, July 3, 1917, pp. 4661-4679.)

13. Cuff, op. cit., pp. 389-390.

14. Clarkson, op. cit., p. 30. Cuff, op. cit., pp. 388-389, describes how Baruch's experience and personality style influenced the management of the World War I mobilization:

> Firmly convinced the Commission had been founded to promote a better understanding between business and the Administration, Baruch was intent on devising a system of cooperation which would give practical evidence of some mutual accord. His object was to reach industry by contacting the "leading men" in each trade and thereby to have their "personal help and assistance" for "quick and economic action." Baruch opposed any extensive organizational scheme which would tie the process down in bureaucratic red tape. From his own experience on the "Street" he was convinced that the way to get things done and done efficiently was to know the right man in the right place. Baruch himself was always determined to get things done and confident that he knew or could soon discover just the men to do them. Who was in a better position to provide information regarding trade conditions than industry's recognized spokesmen? By working with them in a very informal and personal way, Baruch argued, the Commission would have on record "the man whom the Council could call upon for economic and efficient delivery." Baruch's outline had the attractiveness of simplicity and speed and eliminated the need for far-reaching interference and control. The Administration would simply use the information and organization private industry had readily available.

15. Cuff, op. cit., p. 391.

16. Clarkson, op. cit., p. 42 notes:

> ...the basically sound but hysterically over-emphasized criticism of the fusion (eliminated when the War Industries Board was formed) of active business with membership of committees having to do with advice relating to purchases. The dual relation, the result of a hasty short cut, was undoubtedly wrong in principle, but it is a tribute to human nature at its best that there was in fact so little, if any, abuse of it.

17. The compromise measure, approved after President Wilson intervened against the proposed limitations, barred any government agent from soliciting a contract if he had a personal financial interest, but permitted him to recommend award of a contract if he first disclosed in writing his interests in the matter. Supporters of a government-industry divorce argued that this was not much of a protection -- after all, the involvement of key industrialists was already well known, and disclosure of these already well-known relationships would permit them to operate pretty much as before. Nevertheless, with the President's support, the bill was approved on July 18, 1917.

18. Clarkson, op. cit., p. 304.

19. Cuff, op. cit., p. 404.

20. Nash, Gerald D., "Experiments in Industrial Mobilization: WIB and NRA," Mid-America, November 3, 1963, pp. 163-164. For additional information on the convention, see "Mobilizing American Industry," Commercial America, October 1917, p. 11 and "Business Starts its Great Drive," Nation's Business, September 1917, pp. 34-36.

21. Cuff, op. cit., p. 405.

22. Clarkson, op. cit., pp. 308-310, was particularly enthusiastic:

> Thus at one definite place all of an industry -- the producer -- and all of Government -- the consumer -- could meet and dispose of every situation so far as the bringing together of requirements and supplies could do it... As they came into efficiency, all the guesswork,

uncertainty, and vagueness of Government relations with industry disappeared... No more did Government agencies shoot orders in the general direction of sources of goods, hoping to hit something sooner or later. The commodity sections stood at their respective tanks, their hands on the spigots, prepared to measure out the Nation's resources, not on the principle of first come, first served, to the limit of his demand, but in neat allocations according to the standard of priority... The more one studies the operations of the commodity sections, the more he is impressed by their simplicity and efficiency. They were more than the mobilization of industry. They were industry mobilized and drilled, responsive, keen, and fully staffed. They were industry militant and in serried ranks.

23. Baruch, op. cit., p. 111.

24. Ibid.

25. Ibid.

26. Ibid.

27. Clarkson, op. cit., p. 313.

28. Ibid.

29. Ibid., p. 74.

30. Ibid., pp. 328-329.

31. U.S. Department of War, America's Munitions, 1917-1918, Report of Benedict Crowell, Government Printing Office, Washington, 1919, passim., especially pp. 31-37, 43-47, 60, 104, 128, 176, and 291. The relatively small portion of U.S. equipment needs provided by U.S. industry can be attributed to the lack of preparation and the short duration of U.S. involvement (roughly one and one-half years). Had the war lasted, as expected, into 1919, American production would have surpassed the Allies and the history of the U.S. production effort would undoubtedly have been written differently. Thus, the WWI experience (2 years to achieve peak production) is generally consistent with the more favorably remembered WWII production record. The U.S. government undoubtedly paid a horrendous price for the war materiel -- both in dollar and broader economic terms -- but the system functioned effectively.

32. Clarkson, op. cit., p. 312.

33. Koistinen, op. cit., pp. 33-34.

34. Insightful views on the use of the WIB precedent in fashioning initial responses to the Great Depression are found in Nash, op. cit.; in Leuchtenburg, William E., "The New Deal and the Analogue of War," printed in Braeman, John et al., ed., Change and Continuity in Twentieth-Century America, Ohio State University Press, Columbus, 1964, pp. 81-143; and in Johnson, Hugh S., The Blue Eagle from Egg to Earth, Greenwood Press, New York, 1968, memoirs of a key participant in World War I mobilization who was also the first administrator of the NRA.

35. Nash, op. cit., p. 165.

36. Ibid.

37. Clarkson, op. cit., p. 313.

38. Ibid., p. 207.

39. Johnson, op. cit., p. 172.

40. Baruch, op. cit., pp. 155-166.

41. Monsees, Carl H., "Industry-Government Cooperation: A Study of the Participation of Advisory Committees in Public Administration," Public Affairs Press, Washington, 1944, pp. 18-19.

42. Ibid., pp. 19-20.

43. See Reed, Leon S., et al., "Resource Management: An Historical Perspective," The Analytic Sciences Corporation, TR-5035-2, 1984, for a discussion of industry's reluctance to become involved in prewar rearmament programs.

44. U.S. Civilian Production Administration, Industrial Mobilization for War - History of the War Production Board and Predecessor Agencies, 1940 -1945, Volume I - Program and Administration, Government Printing Office, Washington, 1947, p. 27.

45. Nelson, Donald M., The Arsenal of Democracy: The Story of American War Production, Harcourt, Brace, and Co., New York, 1946, p. 99. Of course, one inevitable political difficulty of mobilization is that "all-outers,"

such as Nelson, who just want to set peacetime disputes aside in the interests of increased production are, in reality, taking sides in those disputes. In his article "Antimonopoly Policy During Rearmament," American Economic Review, May 1952, Corwin D. Edwards of the FTC notes that 33 cases and 2 investigations within the Department of Justice were deferred.

> As was to be expected from the reason for the deferment, the cases involved some of the largest companies and some of the most important of the alleged violations. It was evident from the beginning that deferment jeopardized the success of the government in these cases, since it involved the probability that memories would grow dim, that some witnesses would die, and that the whole matter would come to seem remote and unimportant because of the passage of time.

The Antitrust Division initially opposed this suspension procedure. Assistant Attorney General Thurman Arnold stated that "it would be in effect a license to any company engaged in national defense...to destroy independent business organizations in order to maintain control after the war." (Quoted in Heath, Jim F., "American War Mobilization and the Use of Small Manufacturers, 1939-1943," Business History Review, No. 3, 1972, p. 304.)

46. Quoted in Monsees, op. cit., p. 33.

47. Ibid., pp. 33-34. For more information on Justice Department views, see Arnold, Thurman and Livingston, J. Sterling, "Antitrust Policy and Full Production," Harvard Business Review, Spring 1942, p. 274. Arnold, who was Assistant Attorney General for Antitrust, was a renowned "trust-buster," but his views were generally supportive of the mobilization aims. In his article, Arnold emphasized the negative impact of international cartels on war production. Arnold contended that:

- "The Germans...long have practiced the technique of industrial control through private commercial agreement...The ease with which private commercial agreements could be used to wage war has been fully understood and appreciated by the Hitler government

- "Secret international commercial alliances ...have deprived American war industries of such strategic materials as magnesium, tungsten carbide, nitrogen, drugs, synthetics, plastics, and a wide variety of chemicals

- "The Germans have secured valuable military data through royalty payments and agreements for the exchange of technical and trade information

- "...private commercial agreements were employed by the Nazi government to control our machine tool production."

In administering the antitrust laws, the Antitrust Division was primarily interested in maintaining the competitive structure of the American economy. Arnold approved of actions that fostered competition, improved opportunities for small business, established new competition (such as government financial aid to establish new aluminum producers), or maintained established commercial relationships.

Despite his opposition to general suspension of antitrust investigations (see end note 45), Arnold conceded that the need to carry out the war program suggested that antitrust prosecution "should not be undertaken... without first submitting the results of investigations to the proper war agency to determine whether continuation of these practices is necessary to the war effort. If antitrust prosecution is undertaken independently, conflicts might arise between the Antitrust Division and the war agencies. Although the decision as to whether prosecution should be undertaken rests with the Attorney General, it has become an established antitrust policy to defer to the request of responsible war officials, when written explanations by these officials set forth the reasons for dropping or postponing prosecution."

48. Civilian Production Administration, op cit., pp. 105-107.

49. Ibid.

50. Nelson, op cit., pp. 144-145, notes:

> "The Industry Advisory Committees, urged upon us some months earlier by Mr. Baruch, and the Commodity Sections, which were set up at this time, were found in actual practice to serve so useful a purpose that they were carried over into all succeeding production agencies of the government. Under the new plan the routines by which industry contacted OPM were greatly simplified. Each major industry dealt with a single division of OPM through a Commodity Section, instead of having to go in turn to the Production, Priorities, and Purchasing Divisions. The Industry Advisory Committees were to enable OPM, and within a few months [the Supply Priorities and Allocations Board] and WPB to discuss the intricacies of a particular industry with a group of specialists selected by that industry to represent it."

51. Monsees, op. cit., pp. 34-36. O'Brian proposed that OPM would no longer clear formation of each committee with Justice, but would instead only clear individual sensitive actions. In addition, he proposed that henceforward, OPM would select members of the committees, the industry-election route having proved to be too cumbersome. However, he proposed to continue the basic principle that OPM would direct the functioning of these committees, setting agendas, calling meetings and chairing meetings.

52. War Production Board, "Directory of Industry Advisory Committees as of January 23, 1943," Government Printing Office, Washington, 1943, p. 2.

53. This description of committee procedures is adapted from Monsees, op. cit., pp. 26-27 and pp. 38-40.

54. Throughout the mobilization, many of the employees brought in to staff temporary war agencies were so-called "dollar-a-year-men," who accepted temporary government appointments for $1 annually and remained on their corporation's payroll. Supporters of this concept, including WPB Chairman Donald Nelson, argued that there was no alternative: knowledgeable industry personnel would not be willing to take significant pay cuts and sever their relationship with their peacetime employers to accept a job that was sure to end with the end of the war. The Truman Committee (officially named the Senate

Select Committee to Investigate the National Defense Program) was the principal congressional oversight committee during the World War II mobilization, a widely-respected voice on mobilization matters, and a consistent critic of "dollar-a-year" men.

55. Monsees, op. cit., p. 38 and Nelson, op. cit., p. 346.

56. Monsees, op. cit., pp. 43-78.

57. Rutherford, Col. H.K., "Educational Orders: Peace Time Training for Industry in Arms Manufacture," Army Ordnance, November-December 1939, p. 166.

58. Green, Constance McL., Thomson, Harry C., and Roots, Peter C., The Ordnance Department: Planning Munitions for War, Office of the Chief of Military History, Washington, 1955, pp. 231-232.

59. See Winslow, Paul R. et al., "Options and Cost of Improving Industrial Responsiveness: Approved Standby Agreement Report and Systems Model," The Analytic Sciences Corp., TR-5142-4, 1985, for a description of the World War II educational orders program.

60. Green, op. cit., p. 232.

61. Thomson, Harry C. and Mayo, Lida, The Ordnance Department: Procurement and Supply, Office of the Chief of Military History, Washington, 1960, p. 203.

62. Ibid., pp. 175-177. Supply of alloy steel was a particularly serious problem, and the absence of integration could have had a serious impact on production. Although each manufacturer required only small quantities, steel mills would not accept orders below a minimum size. This resulted in some manufacturers having excessive inventories while others were unable to obtain any supplies. The committee established a mechanism for pooling orders, so that each manufacturer could get required quantities.

63. Ibid., pp. 122-123.

64. Monsees, op. cit., pp. 66-67.

65. Campbell, LtGen Levin H., The Industry-Ordnance Team, Whittlesey House, New York, 1946, p. 125. Campbell noted that Ordnance recognized that these assurances were "not of such a character as to provide complete

legal immunity and would not be a strong legal defense in court. Only new legislation could provide such protection." After approval of the Small Business Mobilization Act (see Section 2.2.1), Campbell requested that Nelson execute a certificate under Section 12 to certify the need for the Ordnance Corps program, and the certificate was executed.

66. The relevant Ordnance division director (comparable in the present-day Army Materiel Command structure to a commander of a subordinate command -- e.g., Tank-Automotive Command, Munitions and Chemical Command) served as chairman of all integration committees under his purview. Each division director had a number of deputy chairmen within his organization to whom committees within particular product areas reported (e.g., the Ammunition division director, who chaired all ammunition integration committees, had deputy chairmen for artillery ammunition, bombs, and miscellaneous ammunition items within his organization). (Campbell, op. cit., pp. 129-130)

67. Ibid., p. 129.

68. Monsees, op. cit., p. 67

69. Ibid., pp. 67-68

70. Thomson, op. cit., pp. 142-143.

71. Campbell, op. cit., p. 120

72. Ibid., p. 126. Campbell describes how this worked in one committee:

> "...the 105-mm. Field Howitzer Committee... like other committees in the gun group, undertook its own allocation of gun-tube forgings. Since the committee office knew the exact number of finished gun tubes, tubes in process, and tube forgings on hand, the supply from the forgers was apportioned among the several manufacturers to prevent any plant from shutting down for lack of forgings and, similarly, to prevent the accumulation of excess stocks in any one plant. This allocation authority was vested in the committee so that the Ordnance representative could act directly on the basis of complete and up-to-the-minute information without continual reference to Washington." (Ibid., p. 131)

73. Ibid., pp. 118-119

74. E.g., see Monsees, op. cit., p. 3 and Nelson, op. cit., pp. 344-347.

75. Thomson, op. cit., p. 471

76. Campbell, op. cit., pp. 117-118.

77. Machine tool panels are described in ibid., pp. 133-143, from which this discussion is taken.

78. Labor-management committees are described in Nelson, op. cit., pp. 318-328, from which this discussion is taken.

79. Monsees, op. cit., pp. 11-12, quotes Assistant Attorney General Tom C. Clark on this problem:

> "The American people and the enlightened leaders of American business hope that we shall be able to preserve in our country the principle of free enterprise. But this does not mean the freedom of the old, the established, the entrenched, to gang up on the new, the small, the unprotected. It does not mean freedom to abduct knowledge, to deprive the American people of the fruits of their greatest human resource, inventive genius. It does not mean freedom to conspire through cartels or otherwise with gangster nations preparing for aggression against us, or to create, privately, a gangster economy threatening depression and poverty for our people.
>
> "It does mean freedom of opportunity for all people to engage in legitimate business on an equal footing, with special privileges to none. It does mean freedom of American dollars to buy the most for their American owners.
>
> "The protection of this freedom is our obligation to America. Particularly is this true now, for in the race to get the tools of war made quickly there has been a tendency to leave our war production to the large corporations. It has already resulted in bigger and bigger big business, and a steadily rising rate of fatality for small business. With the cooperation of the War Production Board, we are trying to alleviate that condition.

"To continue such practices there can be but one result -- the death of small business -- and along with it the death of free competitive enterprise in American life.

"Recently Congress was told that at the beginning of our war program 175,000 companies were providing 70% of the nation's manufacturing output and 100 corporations were producing 30%. Today, two and one-half years later, this ratio has been reversed; now 100 corporations hold 70% of the war and essential civilian contracts, while 175,000 small companies hold 30%. To those 100 corporations has gone the great bulk of the $14,000,000,000 worth of new plants built at government expense. Some of these corporations demanded and secured the right after the war to buy and control these new facilities constructed at government expense. These figures tell the tragic tale of the fate of small business resulting from the false notion that only the big can produce efficiently.

"American business, large and small, has nothing to fear so long as it plays the game fairly, according to the rules; but those who get off-side must be prepared to pay the penalty. Speaking for the Attorney General of the United States, Francis Biddle, I can assure you there will be no witch-burning, no uprooting of American customs or traditions; but there will be practical, swift, hard-hitting law enforcement."

Another postwar work that extensively treats the issue of favoritism toward big business is Catton, Bruce, The War Lords of Washington, Harcourt, Brace and Co., New York, 1948. Catton, a "New Dealer" who worked for the War Production Board, argues, in essence, that big business and the military "ganged up" on New Deal advocates, labor, and small business, denying them contracts but presenting them from engaging in civilian production either. See also Heath, op. cit. and Edwards, op. cit. on the same general subject.

3. LEGISLATIVE HISTORY AND IMPLEMENTATION OF DEFENSE PRODUCTION ACT INDUSTRY COOPERATION AUTHORITIES

During the Korean conflict activities akin to the World War II advisory committees and integration committees (as authorized by Sections 701 and 708 of the Defense Production Act of 1950) were established to accelerate defense production and improve industrial coordination. Procurement agencies established voluntary agreements, committees of system or item producers to help solve production problems, and central resource management agencies established industry committees to advise on policies, procedures, allocations, and similar matters. The government also approved a number of voluntary agreements among non-defense industries that allowed these industries to establish their own practices to support the war effort. Some of these agreements (including the tanker capacity agreement discussed in Section 4.6) provided for improved coordination among essential supporting industries while others (including the credit restraint agreement described in Section 4.2) permitted economic self-regulation by industries important to the overall functioning of the economy.

The rules for the Korean conflict cooperative ventures were more rigid and formal than were the rules for their WWI and WWII counterparts. For the first time, a formal legal distinction was made between advisory committees and integration committees/voluntary agreements. Although authorized separately, advisory committees took on many of the administrative trappings of voluntary agreements. However, their operations were somewhat

more constrained than either WWII advisory committees or Korean conflict voluntary agreements because they lacked blanket antitrust immunity.

Responding to the perception that WWII mobilization had increased centralization of economic power and handicapped small business, Congress and the White House expressed extreme sensitivity to the interests of small business. This accounted, in no small part, for the increased rigidity of the law.

This chapter traces the development of these authorities and shows how they have been implemented. Voluntary agreement authorities continue in force, although they have been modified significantly since the end of the Korean War.

3.1 ENACTMENT OF AUTHORITIES

3.1.1 Voluntary Agreement Authority

The Defense Production Act of 1950 (DPA) was introduced in July 1950, in the wake of the North Korean invasion of South Korea. There was little opposition to the concept of permitting industry-government cooperation in the mobilization. The initial proposal was modeled after the World War II-era Small Business Mobilization Act. (See Section 2.2.1). It provided that:

> No act or omission to act which occurs while this Act is in effect if requested by the President and found by him to be in the public interest as contributing to the national defense, shall be construed to be within the provision of the antitrust laws, or the Federal Trade Commission Act.[1]

In approving this section, the House Banking Committee stated:

> The experience of World War II has shown that voluntary cooperation on the part of industry can accomplish much to promote the national defense, where protection is given against the danger of prosecution under the antitrust laws and the Federal Trade Commission Act. Section 508 of the bill contains such an exemption for acts taken at the request of the President.[2]

However, Congress was concerned about the need to guard against monopolistic practices:

> However, in view of the possibility that such voluntary programs might involve activities inconsistent with free competition, or might establish patterns of conduct which would continue after the expiration of the authority granted under the Bill, provision is made for consultation with the Attorney General before action is taken under this section, and the committee has amended the section to make it clear that the immunity provided does not extend beyond the duration of the act.[3]

The Senate approved an amendment proposed by Senator John S. Bricker of Ohio, which was modeled, in part, on a 1947 congressional joint resolution authorizing voluntary agreements for economic stabilization.[4] Virtually the only debate pertained to the issue of whether the President would be required to consult with both the Attorney General and the Chairman of the Federal Trade Commission before approving a voluntary agreement. The Senate Banking Committee had required dual consultations; Senator Bricker felt that such a requirement

> ...would be needlessly encumbering and would be likely to cause constant conflict between the Attorney General and the Chairman of the Federal Trade Commission... The Attorney General is the chief officer who is charged with enforcement of the antitrust laws, and I do not think we should encumber the President or industry with a requirement that the Chairman of the Federal Trade Commission also be consulted...[5]

Ultimately, the dual consultations were required.

The final version signed by President Truman on September 8, 1950, contained the basic provisions approved by the Senate.[6] (In the course of amending the bill, the voluntary agreement provision, originally Section 508, was renumbered Section 708. See Appendix C for the text of Section 708 as approved in 1950, as well as subsequent changes.)

Several provisions that are important in view of subsequent amendments were included in the original DPA. First, all actions taken within the scope of a voluntary agreement were immune from prosecution under the antitrust laws or the Federal Trade Commission Act, if they were found by the President to be "in the public interest as contributing to the national defense."

Agencies proposing to establish voluntary agreements were also required to "consult" with the Attorney General and the Chairman of the FTC, and the Attorney General's approval was required, but no criteria were established for weighing antitrust concerns against national defense preparedness. (Table 3.1-1 shows significant requirements of the original Section 708 and subsequent changes in these requirements.)

TABLE 3.1-1

CHANGES IN MAJOR DPA SECTION 708 PROVISIONS, 1950-1975

	1950 Enactment	1955 Amendments	1969 Amendments	1975 Amendments
WHEN AUTHORIZED	Any time	Any time	Any time	When President finds a direct threat to national defense or preparedness programs
SCOPE OF AGREEMENT	Carry out purposes of DPA	Exchange of technical information between actual or prospective defense contractors	Carry out purposes of DPA	Development of preparedness programs and expansion of productive capacity and supply
ANTITRUST PROTECTION	Immunity from charges	Immunity from charges	Immunity from charges	Defense in any prosecution
WHEN PROTECTION GRANTED	If found by the President to promote national defense	If found by the President to promote national defense	If found by the President to promote national defense	When undertaken within scope of agreement and in good faith
APPROVAL PROCESS	Consultation with Attorney General and FTC; approval by Attorney General	Consultation with Attorney General and FTC; approval by Attorney General	Consultation with Attorney General and FTC; approval by Attorney General	Consultation with Attorney General and FTC before agreecan be developed; approval by Attorney General; Notice in Federal Register 7 days prior to meeting to establish an agreement; public testimony at meetings; transcript and open meetings
RULES FOR ACTIVATION AND CARRYING OUT	None prescribed by law	Attorney General may cancel if he finds anti-competitive impacts outweigh defense benefits	None prescribed by law	Attorney General must approve agreement and find that purposes cannot be otherwise achieved; participants must maintain records, which are available to public; verbatim transcripts of all meetings; Attorney General and FTC may attend all meetings; meetings open to public; prior notice of meetings in Federal Register, unless meetings are closed; agreements must be reapproved every two years.

The Attorney General was also directed by the Act to make general surveys of--

> ...any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of administration of this Act.

Thus, Congress recognized the oft-stated concerns about anti-competitive practices in prior mobilizations, but the protections it established were general in nature and preserved the primacy of defense preparedness over antitrust concerns. Section 708 was intended to facilitate industry-government cooperation, while providing protections considered necessary, rather than obstructing such cooperation.

Besides the basic authority for voluntary agreements to carry out the objectives of the DPA, Congress also provided authority for voluntary agreements in Title IV (Price and Wage Stabilization) of the DPA. Subsection 402(a) stated:

> In order to carry out the purposes of this title, the President may encourage and promote voluntary action by business, agriculture, labor and consumers. In proceeding under this subsection the President may exercise the authority to approve voluntary programs and agreements conferred on him under Section 708...

This section provided no new authority, but instead merely clarified that the authorities contained in Section 708 could be used for voluntary wage and price programs. (The following subsection of Title IV provided that the President could issue regulations and orders to control prices and wages if voluntary programs would not be effective.) The authority

for voluntary wage and price restraint programs was allowed to lapse, together with the rest of Title IV, in 1953, after the election of the anti-controls Eisenhower administration.

3.1.2 Advisory Committee Authority

The Defense Production Act contained another provision closely related to the authority for voluntary agreements. Unlike Section 708, Section 701, which permits the establishment of advisory committees, has not been changed since the 1950 adoption of the DPA. Subsection 701(b)(ii) provides:

> Such business advisory committees shall be appointed as shall be appropriate for purposes of consultation in the formulation of rules, regulations, or orders, or amendments thereto issued under authority of this Act...

The intent of this section was clearly shown by its placement in a section of the DPA describing congressional intent that "small-business enterprises be encouraged to make the greatest possible contribution toward achieving the objectives of this Act." The previously-cited subsection continues:

> ...in their formation there shall be fair representation for independent small, for medium, and for large business enterprises, for different geographical areas, for trade association members and nonmembers, and for different segments of the industry.

Thus, in one relatively brief paragraph, the authors of the DPA recognized and expressed their opinion on most of the concerns expressed about prior industry-government consultation procedures.

3.2 INITIAL IMPLEMENTATION

3.2.1 Voluntary Agreements

Although the DPA did not prescribe the method of establishing and approving voluntary agreements, a procedure quickly evolved. This procedure, which prevailed until the 1955 amendments to the DPA, was described in a letter from the Assistant Attorney General:

> These approvals are the end result of a well set informal procedure. Thus, a tentative draft of the proposed voluntary agreement is generally informally submitted to the Federal Trade Commission and the Attorney General. Then follows a conference between members of the Antitrust Division staff and representatives of the agency proposing the voluntary agreement. This conference aims to insure the tentative draft meets, on the one hand, the needs of national defense and on the other, considerations of antitrust policy. From these conferences a draft emerges which is formally submitted by the President's delegate to the Attorney General. As a result of this informal procedure, formal submission and approval requires a minimum of redrafting and explanation.[7]

According to the Assistant Attorney General, the Justice Department followed two principles in acting on voluntary agreement proposals. First, the Department of Justice was not obligated, or authorized, to question the defense need for a voluntary agreement:

> This Attorney General, like his predecessors apparently without exception, determines only that any agreement or program which ODM [the Office of Defense Mobilization] deems our defense requires is formulated and is carried out in that manner least detrimental to competition. Thus, to our view, present law

> does not direct the Attorney General to go behind ODM's finding of defense necessity... The determination of whether or not the national defense is involved is not up to the Department of Justice.[8]

A second general principle was to "hold to a minimum" the number of agreements authorized and the number of participants in any agreement. Thus, the Department of Justice urged timely withdrawal of agreements "if and when the appropriate government agency determines any agreement is no longer necessary to effectuate defense objectives."[9] Indeed, although no specific authority was given for the Attorney General to withdraw immunity (thus cancelling an agreement), the Attorneys General all took the view that they had such authority, and exercised it on at least two occasions.[10]

The Attorney General also required a number of safeguards for each voluntary agreement. These included:

- The chairman and secretary of each committee must be full-time government employees
- Complete minutes must be kept of each meeting
- Committees and subcommittees could only meet at the call of the chairman
- The agenda for each meeting must be prepared by the government and included with each notification of committee meetings
- The final determination of any action to be taken was to be made solely by the government representative
- Each committee would be promptly terminated upon expiration of DPA Section 708 authority or upon withdrawal of the request to participate.[11]

As of October 8, 1951, little more than a year after approval of the DPA, 24 voluntary agreements had been approved, and six more were being considered. These included:

- Five small business production pools
- Eleven Army integration committees
- Seven "miscellaneous" agreements
- One classified agreement (which was revealed in subsequent reports to be sponsored by the U.S. Information Agency).[12]

(These types of agreements are discussed, generally, in Section 4.1. Small business production pools are also discussed in Section 5.1.) Ultimately, during the Korean War period, 77 voluntary agreements were approved by the Attorney General.

Between the 1950 enactment and the major amendments in 1955, only one change was made in Section 708. In 1952, Congress added a new subsection prohibiting any voluntary agreements for credit control. (See Section 4.2 for a discussion of the credit control program.)

One additional change in authority for DPA voluntary agreements occurred in 1952, when Executive Order 10323 transferred the authority to provide assistance in forming small business production pools from the National Production Authority (NPA -- an agency of the Department of Commerce) to the Small Defense Plants Administration (SDPA -- an independent agency which was the predecessor to the Small Business Administration).[13] The SDPA was established by Congress, through an amendment to the DPA, after dissatisfaction was expressed with

the NPA small business assistance office (which itself had been established at congressional behest less than six months prior to the formation of the SDPA).

3.2.2 Advisory Committees

By the time agencies made their first submissions to the Joint Committee on Defense Production, numerous advisory committees were in operation. The distinction first seen in World War II was maintained: whereas most defense production voluntary agreements were established on the basis of a particular weapons system or weapons program (e.g., B-47 bomber, small arms ammunition), advisory committees represented members of a particular industry. (Miscellaneous voluntary agreements usually comprised members of a specific non-defense production industry.)

While the authorization was fairly broad, mobilization management agencies were not given carte blanche in establishing these committees. In fact, advisory committees were subject to some of the same constraints as voluntary agreements.

Criteria for Advisory Committees - Concerns about the impact of mobilization programs on economic concentration were expressed immediately after approval of the DPA. On September 28, 1950, President Truman wrote a memorandum to the war agencies saying:

> As I pointed out in my State of the Union message in January 1947, during the last war the long-standing tendency toward economic concentration was accelerated. Partial mobilization, in the absence of protective measures, may again expose our economy to this threat and thereby imperil the very

> system we are seeking to protect. In numerous provisions of the Defense Production Act of 1950, Congress indicated its concern over this danger to free competitive enterprise.
>
> In order that this danger may be minimized, it is requested that...you consult with the Attorney General and the Chairman of the Federal Trade Commission for the purpose of determining and, to the extent consistent with the principal objectives of the act and without impairing the defense effort, of eliminating any factors which may tend to suppress competition unduly, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power.[14]

On October 19, 1950, the Deputy Attorney General prescribed standards for establishment of advisory committees. He stated that the responsibility for establishing such committees rested with the sponsor, but that the following criteria should be followed to "minimize the possibility of violation of the antitrust laws:"

- There must be a statutory authority for use of committees or "an administrative finding that it is necessary to utilize such committees to perform certain statutory duties"
- The agenda for all meetings must be "initiated and formulated" by the government
- All meetings "must be at the call of and under the chairmanship of" full-time government employees
- Complete minutes must be kept of each meeting
- Committees can be only advisory, and all decisions as to action "must be made solely by Government representatives."[15]

The Justice Department letter concluded that such meetings, in and of themselves, would not violate the antitrust laws if these criteria were followed. However, the letter noted that "the Department of Justice retains complete freedom to institute proceedings, either civil or criminal, or both, in the event that any particular plan or course of action is used to accomplish unlawful private ends."[16] Thus, advisory committees were considerably more proscribed than voluntary agreements; the Department of Justice permitted them to meet, but left the members at risk for any particular actions taken in those meetings.

Department of Defense Advisory Committees - In the first annual report of the Joint Committee on Defense Production, the Department of Defense reported that it had established 25 industry advisory committees and 50 subcommittees, with a total membership of 800 industry representatives. DoD noted that membership on the committees was "selected from the large, medium and small companies which are representative of all phases of a particular industry and from all sections of the country."[17] The Munitions Board, sponsor of the advisory committees, adopted a practice whereby one-third of the membership of each committee should change each year, if possible.

Proposed members were solicited from technical societies, defense agencies, and other government departments. For all committees dealing with stockpiling, concurrence was obtained from the Department of the Interior.[18]

National Production Authority Advisory Committees - The National Production Authority (NPA) was even more active in establishing advisory committees. As of September 30, 1951, 455 industry advisory committees had been established to advise NPA's industry divisions.[19]

NPA established an Office of Industry Advisory Committees, reporting directly to the Administrator, to coordinate all advisory committee activities. Committees were established after submission of a proposal by the industry division director involved. NPA established policies to assure that "the Authority receives the benefits of a true cross-section of industry views and advice in the establishment, use, and management" of the committees.[20] Suggestions for membership were sought from "all available and useful sources" within the industry and the Federal government. The proposed membership was compared against the composition of the entire industry, to ensure fair representation of all industry segments. Proposed membership lists were also submitted to NPA's Office of Small Business. If the Office of Small Business and the industry division disagreed on proposed membership, the Office of Industry Advisory Committees made the final decision as to membership.[21]

Justice Department Concerns - The Justice Department had serious concerns about possible abuse of advisory committees. In March 1951, six months after approval of the DPA, the Assistant Attorney General noted in a letter to the Secretary of Commerce that:

> ...many business advisory committees, in their formation and in their operation, violate both the letter and spirit of the letter addressed to you on October 19, 1950, by Deputy Attorney General Ford.[22]

Improper practices noted by the Justice Department included:

- "Committees have met without the benefit of a government chairman
- "Government representatives have lacked proper qualifications

- "Agendas have been prepared and meetings have been called by industry rather than by the department or agency concerned
- "Subcommittees, panels, and other subgroups have not adhered to the requirements established for the full committees
- "The requirements with reference to committee representation...have not been met
- "Many of the committees, rather than being advisory, have in fact made decisions and exercised functions which properly should reside exclusively in Government officials."[23]

In June of the same year, the Attorney General wrote to Charles E. Wilson, Director of the Office of Defense Mobilization, again raising the issue of compliance with the DPA:

> ...I have become greatly concerned with the manner in which business advisory committee activities have been conducted by these agencies.[24]

He summarized the concerns raised by the Department's earlier letter:

> ...Since that time, it does not appear that these objectionable features have been entirely corrected.[25]

He raised an additional issue concerning the proper role of business advisory committees:

> Business advisory committees, in our opinion, have the sole function of giving advice and making recommendations to the Government when requested to do so. Their decision should not be substituted for that of the Government and they should not serve as a vehicle for gathering information from the industry. An

- "...Minutes of meetings have not always been prepared by Government officials nor by individuals present at the meetings
- "Minutes have been submitted to trade associations and other industry groups for changes and deletions...
- "Committees have requested information from industry in the name of the department or agency by which they were formed
- "Public relations projects of trade associations have at times been presented at committee meetings."[28]

The letter said that government representatives at such meetings had sometimes (incorrectly) stated that committee members were immune from prosecution under the antitrust laws. The letter again expressed the Department's position that it reserved complete freedom to take civil or criminal actions for violations, and noted that some of the actions described could be violations of the antitrust laws.

Subsequent Utilization of Advisory Committees - Utilization of advisory committees remained relatively intense for several years. In the Joint Committee's second annual report, the National Production Authority reported that the number of business advisory committees had increased from 455 on September 30, 1951, to 550 a year later. These committees held a total of 656 meetings during that year.[29] A year later, the number of committees had increased to 554, but the number of meetings fell to 234.[30] By 1954, the National Production Authority had been reorganized and renamed the Business and Defense Services Administration (BDSA). In the prior year, four types of advisory groups had held a total of 115 meetings. (Annual activities of advisory committees are summarized in Tables 3.2-1 and 3.2-2.) As these tables show, advisory committee activity gradually dissipated in the mid-1950s.

TABLE 3.2-1

ANNUAL ACTIVITIES OF NATIONAL PRODUCTION AUTHORITY INDUSTRY ADVISORY COMMITTEES (IACs), 1950-1953

	Number of IACs	Number of Members	Number of Meetings
1950-1951	455	n.a.	n.a.
1951-1952	550	c.7,000	656
1952-1953	554	c.7,500	234

Sources: NPA Submissions to first through third annual reports of the Joint Committee on Defense Production

TABLE 3.2-2

ANNUAL ACTIVITIES OF BUSINESS AND DEFENSE SERVICES ADMINISTRATION ADVISORY COMMITTEES, 1953-1963

	Industry Conferences	IAC Meetings	Special Conferences	Task-group Meetings	Total
1953-4 (11 Months)	27	23	10	55	115
1954-5	15	25	6	113	159
1955-6	1	28	6	58	93
1956-7	-	51	5	27	83
1957-8	-	9	3	19	31
1958-9	-	6	7	10	23
1959-60	-	3	-	5	8
1960-61	-	1*	2	4*	6
1961-62	-	3	-	5	8
1962-63	-	-	-	2	2

*1 joint IAC-Task group meeting

Sources: BDSA submissions to fourth through thirteenth annual reports of the Joint Committee on Defense Production

3.3 1955 DPA AMENDMENTS AND SUBSEQUENT IMPLEMENTATION

In 1955, Congress made the first substantial amendments to Section 708 of the DPA. These amendments considerably narrowed the scope of the voluntary agreements program. (See Table 3.1-1 for a summary of key provisions of the original Section 708 and subsequent changes.)

3.3.1 Congressional Action

At the time, there was considerable concern about the potential for anticompetitive practices, and some sentiment that Section 708 should be repealed. For instance, Representative Emmanuel Celler (D-NY), chairman of the House Judiciary Committee, testified:

> I submit to the committee that in view of the drastically changed conditions which have obviated the need for mandatory rationing of scarce materials, the control of prices, and vast authority for supervisory agencies -- they have all gone down the drain -- there is no longer any need at all for continuing the immunity provisions accorded to businesses from prosecution under the antitrust laws.[31]

Congress did not take such a negative view of the authority for voluntary agreements, but there was general agreement that the scope of these agreements should be narrowed.[32] Many congressmen also agreed that the Attorney General should have a larger role in reviewing voluntary agreements. Thus, Congress made two significant changes to Section 708.

First, the permitted scope of new voluntary agreements was narrowed significantly. Whereas originally an

agreement could be established for any purpose to "further the objectives" of the DPA, new agreements were limited to:

> ...the exchange between actual or prospective contractors of technical or other information, production techniques, and patents or patent rights, relating to equipment used primarily by or for the military which is being procured by the Department of Defense or any department thereof, and the exchange of materials, equipment, and personnel to be used in the production of such equipment.[33]

(Agreements approved prior to the effective date of this amendment were permitted to continue, pending a review by the Attorney General.) For all practical purposes, this section precluded establishment of any new "miscellaneous" agreements, such as the credit control, foreign petroleum supply, and tanker capacity agreements.

The second change increased the involvement of the Attorney General in reviewing the implementation of voluntary agreements. Originally, the Attorney General did not question the national defense need for a voluntary agreement, but instead confined his role to establishing that the agreement was configured in the least anticompetitive way. The new Section 708(b) required the Attorney General to review all existing voluntary agreements and to weigh the "adverse effects of any such agreement or program on the competitive free enterprise system." If he found that these negative impacts outweighed the national defense benefits, he had the authority to cancel the agreement. The Attorney General was ordered to report his findings within 90 days of enactment of the 1955 amendments.

3.3.2 Subsequent Events

Most agreements had been deactivated within a few years of these 1955 amendments, and few new agreements have been approved since then.[34] However, although the 1955 amendments coincided roughly with the decline of the voluntary agreements program, it did not cause this decline.

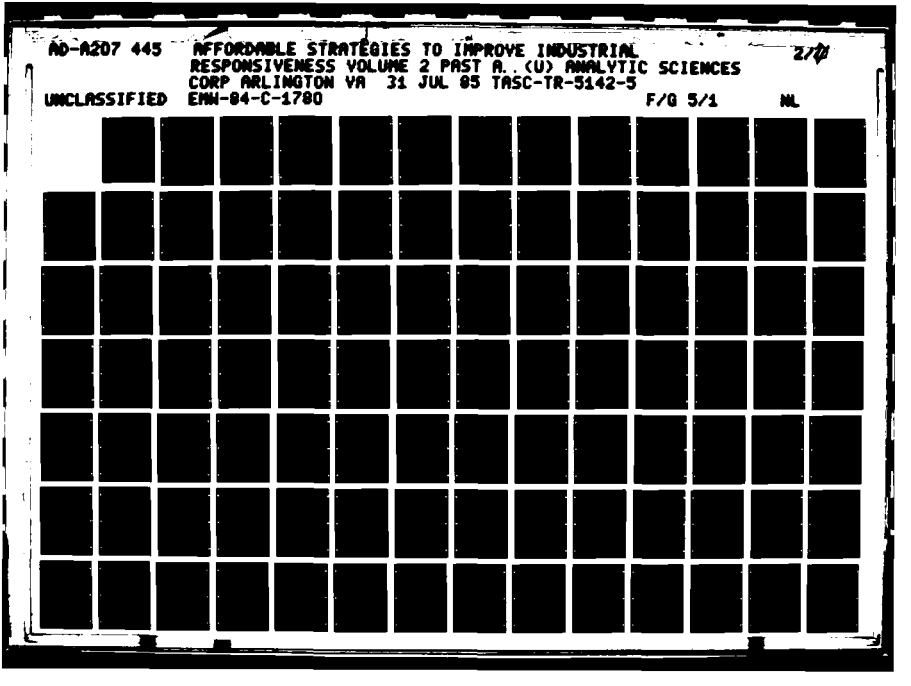
Table 3.3-1 shows the total number of integration committees, production committees, and miscellaneous agreements approved, withdrawn, and active from 1951 through 1956. As the table shows, 19 of the 47 committees had already been deactivated by September 1955. In the following year, only one new committee (the J-57 engine production committee) was established and seven committees (including the J-57) were terminated. Implementation of the new ground rules continued the trend toward termination of committees, but did not start it. This trend had started several years earlier with the end of the war and the decline in preparedness budgets.

In the Attorney General's third report submitted under the new requirements, he noted a change in industrial preparedness planning assumptions that changed his views significantly and could have breathed new life into the program. In his report, he noted an amendment Congress had made in the DPA's statement of purpose to the effect that the mobilization effort:

> requires the development of preparedness programs...in order to reduce the time required for full mobilization in the event of an attack on the United States.[35]

AD-A207 445 AFFORDABLE STRATEGIES TO IMPROVE INDUSTRIAL RESPONSIVENESS VOLUME 2 PAST A.. (U) ANALYTIC SCIENCES CORP ARLINGTON VA 31 JUL 85 TASC-TR-5142-5

UNCLASSIFIED EMW-84-C-1780 F/G 5/1 NL



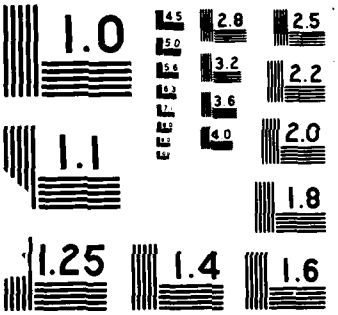

1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6

TABLE 3.3-1

FORMATION AND TERMINATION OF VOLUNTARY AGREEMENTS, 1951-1956

	12 Months Ending:		New Approvals	Total Approved	Total Withdrawn	Total Active	Net Change
Period of Growth	Sept. 30, 1951	a.	9	9	0	9	--
		b.	1	1	0	1	--
		c.	7	7	0	7	--
			17	17	0	17	--
	Sept. 30, 1952	a.	15	24	0	24	+15
		b.	2	3	0	3	+ 2
		c.	4	11	4	7	0
			21	38	4	34	+17
Period of Decline	Sept. 30, 1953	a.	3	27	5	22	- 2
		b.	0	3	0	3	0
		c.	1	12	6	6	- 1
			4	42	11	31	- 3
	Sept. 30, 1954	a.	2	29	7	22	0
		b.	1	4	1	3	0
		c.	0	12	8	4	- 2
			3	45	16	29	- 2
	Sept. 30, 1955	a.	2	31	8	23	+ 1
		b.	0	4	3	1	- 2
		c.	0	12	9	3	- 1
			2	47	19	27	- 2
	Sept. 30, 1956	a.	0	31	13	18	- 5
		b.	1	5	4	1	0
		c.	0	12	9	3	0
			1	48	26	22	- 5

Key: a. Army integration committees
b. Air Force production committees
c. Miscellaneous agreements

Note: Small business manufacturing pools excluded from table.

The Attorney General noted that the emphasis of the preparedness program was shifting from short-range mobilization to long-range preparedness activities. (The remarks of the Attorney General are included in Appendix F.) He stated:

> To meet long-range defense plans, rather than short-range emergency needs, procurement to build up immediate reserve stockpiles of full mobilization requirements is now considered to be impracticable. The stockpiling of adequate reserves under such conditions is almost an economic impossibility, requiring, as it does, a huge investment in materiel which inevitably becomes obsolescent as time passes. Therefore, it has been deemed essential that a realistic balance be obtained between the reserve stockpiling of military end items and the establishment and retention of adequate industrial capacity... Industrial capacity must depend upon current producers and other production facilities which can be keyed to immediate reactivation or conversion to production of military end items. Consequently, current mobilization planning for the eventuality of a total defense effort relies principally upon a broad industrial base consisting of (1) current producers... (2) "standby" or "layaway" facilities, which are...maintained in such a condition as will assure rapid reactivation in the event of an emergency; and (3) a corps of "planned producers" whose production lines...are keyed to rapid conversion to production of specified military items upon demand.[36]

Because of these new assumptions, the Attorney General noted that he was changing his views. Previously, he had argued that the potential for anticompetitive practices dictated that participation in voluntary agreements be minimized, and he had rejected proposals to allow standby and planned producers to join voluntary agreements.

> It was our view that such an extension would merely increase the possibilities of anticompetitive practices arising from this association of competitive producers, without achieving any commensurate defense mobilization benefits.[37]

Under the new program, he noted the importance of keeping inactive producers abreast of changes in technology or production processes, and also, "because of the probable necessity...for a general exchange of machine tools and components and other kinds of facilities integration" it was necessary for current producers to be aware of the capabilities and limitations of inactive producers. Under these conditions, the Attorney General conceded that such inactive producers should be permitted to join, with certain restrictions.

As shown in Table 3.3-2, declining procurement levels, and the corresponding reduction in contracts, would have made many participants ineligible to continue under the old rules. Within six months of the new opinion, the Army had begun to increase the membership of its committees, and it appeared that the program might be revitalized.

However, the Attorney General noted a different problem of greater long-term significance: many of the committees were not very active. Only three of the 18 active Army committees had met in the previous quarter. The Attorney General stated:

> I have again weighed the national defense necessity of these outstanding voluntary agreements against their anticompetitive aspects. As a result, assuming there is no immediate emergency, I am not wholly satisfied that sufficient energy is being displayed by a few of these integration committees to justify

TABLE 3.3-2

NUMBER OF PARTICIPANTS, SELECTED VOLUNTARY AGREEMENTS

Ordnance Ammunition Integration Committees	
Small Arms Ammunition:	
Original members	5
Industry members to be added	5
Military members to be added	5
Conventional Artillery and Mortar Shell:	
Original members	82
Became ineligible under old plan but reinstated under amendment	62
Members to be terminated	8
Cartridge Cases:	
Original members	25
Became ineligible under old plan but reinstated under amendment	15
Members to be terminated	5
3.5-inch Rocket:	
Original members	19
Became ineligible under old plan but reinstated under amendment	15
Members terminated	1
Members to be terminated	1
Military Pyrotechnics:	
Original members	11
Became ineligible under old plan but reinstated under amendment	7
Members to be terminated	2
Ordnance Tank-Automotive Integration Committees:	
Heavy Tactical Trucks:	
Original members	5
Became ineligible under old plan but reinstated under amendment	4
Light Gun Tank and Allied Combat Vehicle:	
Original members	6
Became ineligible under old plan but reinstated under amendment	5
Cast Armor for Track-Laying Vehicles:	
Original members	8
Became ineligible under old plan but reinstated under amendment	5
Tracks for Track-Laying Vehicles:	
Original members	8
Became ineligible under old plan but reinstated under amendment	6

> fully the Army belief that they substantially contribute to the national defense, now or in the future.[38]

He suggested that the desire to maintain preparedness might be achieved by placing the committees in a standby, inactive status, as had recently been done with the Voluntary Tanker Capacity Agreement.

In response, the Army Judge Advocate General asked the Ordnance and Tank-Automotive Commands (sponsors of virtually all of the Army agreements) to review the operations of their committees and recommend whether they should be continued, placed in standby status, or terminated.[39] As a result of these reviews, and the continuing inactivity of the committees, the program faded. From a high of 34 active agreements (excluding small business pools) in 1952, the program declined to 22 agreements in 1956; twelve active and seven standby agreements in 1960; and four active and two standby agreements in 1970.

Although the new requirements established in 1955 added to the administrative burden of sponsors and increased the Attorney General's authority, they did not fundamentally change the nature of the program, nor did they accelerate the decline that was already underway by the time the new amendments were approved. The dissipation of the program should probably be attributed to two other factors.

First, the end of the Korean conflict had an undoubted impact on the perceived need for active agreements. While government and industry personnel can be easily motivated to participate in preparedness activities during an actual emergency, it is much more difficult to maintain interest in preparedness after the emergency has passed. The end of the

emergency situation and the decline in contracting levels reduced interest in the program -- and, for that matter, reduced the need as well.

Even more significant was the major change in national strategy and planning emphasis that affected the entire preparedness program in the mid-1950s. The agency submissions to the Joint Committee on Defense Production annual reports show the changing emphasis in this time period, from preparedness for a wide range of conflicts to preparedness for all-out nuclear war. Even by the fifth Joint Committee annual report (covering activities during 1955), much greater emphasis was given to nuclear-war issues such as continuity of government, civil defense, and industrial protection.[40] Reports on mobilization preparedness tended to be an after-thought, were more often confined to ongoing programs such as the stockpile and the Defense Materials System, and, over time, became increasingly repetitive and stylized from year to year.

The annual agency submissions provide an accurate "snapshot" of the changing priorities of the preparedness program. In the mid-1950s, long-war planning was formally rejected in favor of planning for short, no-warning, nuclear conflicts. It was these changes in national planning assumptions, rather than any congressional "tinkering" with the DPA, that led to the demise of the voluntary agreements program. The result of these changes was that only one voluntary agreement played any significant role in the Vietnam period (the Small Arms Ammunition Committee). By the time the Joint Committee's 20th annual report was published (December 1970), all that remained of the voluntary agreement program was the Foreign Petroleum Supply agreement (active), the tanker agreement (standby), and four Army integration committees (3 of which were active).

As shown by Table 3.2-2, activities of preparedness-related advisory committees followed the same pattern of decline throughout the 1950s. Ultimately, in 1972, Congress adopted the Federal Advisory Committee Act, which set strict procedural limits on formation of these committees.

3.4 1969 DPA AMENDMENTS

In 1969, Congress approved DPA amendments that inadvertently repealed all of the significant 1955 amendments to Section 708. This action was not motivated by any desire to restore the place of voluntary agreements in preparedness planning and, consequently, it had little, if any, impact on program implementation.

In 1969, during consideration of credit control legislation, the House and Senate Banking Committees took opposite approaches. The House Banking Committee approved mandatory credit control authority. The Senate Banking Committee preferred authority for voluntary credit controls programs, and fixed upon the DPA as a likely source of this authority. It decided that repealing the 1952 and 1955 amendments restricting the scope of voluntary agreements would be sufficient to restore this authority. Therefore, the committee repealed Subsection 708(f), which had prohibited voluntary credit control programs, and the portion of Subsection 708(b) that had limited the scope of voluntary agreements to military end item producers. The committee stated that this would permit voluntary credit control programs similar to the 1951 agreement.[41] The conference committee subsequently enacted this proposal into law.

Ironically, while the 1969 amendments were prompted by the desire to promote voluntary credit control programs, they inadvertently repealed the 1955 provisions increasing the review authority of the Attorney General and restricting the scope of voluntary agreements. However, this did not stimulate renewed interest in voluntary agreements and, indeed, does not appear to have been noted in any important way by the sponsoring agencies. The voluntary agreements program had become so inactive that a major change in the authorizing legislation had no significant impact on the programs.

3.5 1975 DPA AMENDMENTS

By the time Congress approved 1975 amendments to the Defense Production Act, the voluntary agreements program was, for all practical purposes, moribund.[42] There was one exception, however: the Voluntary Agreement Relating to the International Energy Program, a DPA voluntary agreement among international oil companies. This agreement, established to supplant the Foreign Petroleum Supply Agreement (which remained in effect as well), was established to permit oil companies to advise and coordinate with the International Energy Agency, an agency established in 1974 by agreement between the United States and 18 other countries.[43]

At the time, in the aftermath of the 1973 oil embargo, suspicion of the international oil companies ran especially high. Because of this suspicion, Congress set out to establish as many constraints as possible on the operation of the energy voluntary agreement. This took two forms: restrictions on international energy voluntary agreements in the newly-proposed Energy Policy and Conservation Act (EPCA) and similar restrictions, adopted as a fallback in case EPCA failed, in the

Defense Production Act. Through the same "tail-wagging-the-dog" logic that had led in 1969 to significant changes in the basic authority because of a desire to promote voluntary credit controls, the new restrictions were also applied to the less controversial defense-related voluntary agreements in order to promote consistency and symmetry.[44]

The new amendments established procedural, rather than substantive, limitations on voluntary agreements. Additional reviews by the Attorney General and Federal Trade Commission were required in the establishment and monitoring of voluntary agreements; record-keeping, notification, and open-meeting requirements were added; and the scope of antitrust protection afforded participants was narrowed significantly. (See Table 3.1-1.)

The following sections summarize the 1975 requirements for establishing and operating voluntary agreements.

3.5.1 Development of Agreements

The timing and scope of forming voluntary agreements were changed in two important ways. Previously, the DPA did not limit when voluntary agreements could be formed. The 1975 amendments require a finding that "conditions exist which may pose a direct threat to the national defense or its preparedness programs" before an agreement can be established (Subsection 708(c)(1)). This represents only a modest tightening of requirements. The authors of the amendment indicated their intent that voluntary agreements could be used in "emergency situations short of war or mobilization" as long as the agreement could show "a clear relation to the Act's general objective of providing ongoing and standby programs aimed at preparing an adequate industrial base...." (See Appendix D, Section D.3.)

Significantly, the authority to make the finding of need for a voluntary agreement is left with the program agency (the President's delegate), not the Justice Department. In this sense, the 1975 amendments are much more permissive than the 1955 amendments, which required the Attorney General to weigh the national defense need against the negative anticompetitive consequences of a proposed voluntary agreement.

The permitted scope of voluntary agreements was also modified, although, again, it is not as narrow a restriction as that applied between 1955 and 1969. Agreements can be approved "to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand" (Subsection 708(c)(1)). Although this is a relatively narrow authorization, it would permit establishment of a broader range of agreements than the defense production-oriented requirements of the 1955 amendments.

The original version of the 1975 amendment introduced in the Senate was much more restrictive. This proposal would have precluded peacetime establishment of voluntary agreements and given principal authority for the program to the Justice Department. The bill was changed to its more flexible present formulation during Senate Banking Committee deliberations, at the request of Leslie W. Bray, Director of the Federal Preparedness Agency.[45] (See Appendix D.)

Procedures for establishing agreements were spelled out in much greater detail in the 1975 amendments. Subsection 708(c)(2) requires consultation with the Attorney General and the Chairman of the Federal Trade Commission (FTC) at least 10 days before any meeting to develop an agreement and requires

approval by the Attorney General before development of the agreement can proceed. (This represents the first of two reviews by the Attorney General before an agreement can be activated.)

Advisory committees may be formed to assist in development of voluntary agreements and are subject to requirements of the Federal Advisory Committee Act. This includes requirements that all advisory committee meetings be chaired by a full-time government employee; that committees include representatives of the public; that meetings be open to the public; that the Attorney General and Chairman of the FTC be notified and allowed to have a representative attend; and that a verbatim transcript be kept and made available for public inspection (Subsection 708(d)).

At meetings to develop agreements, representatives of the program agency, Justice Department, and FTC must be in attendance. The program agency representative must chair the meeting. Notice of any meeting to develop an agreement must be published in the Federal Register at least seven days before the meeting. The public must be afforded an opportunity to present oral or written comments at these meetings, and, unless a Freedom of Information Act (FOIA) exemption related to confidential business information or national security information is cited, the meeting must be open. A verbatim transcript, as well as the text of the proposed voluntary agreement, must be provided to the Justice Department and the FTC, and, subject to FOIA exemptions, must be available for public inspection.

3.5.2 Activation of Agreements

After the agreement is developed, it must be submitted again to the Attorney General and the FTC, and the

Attorney General must make a second approval, this time of the specific agreement. The Attorney General must conclude that the purposes of the agreement could not be achieved either:

- Through a voluntary agreement having a lesser anticompetitive impact
- Without a voluntary agreement (Subsection 708(f)(1)(B)).

The impact of the approval granted by the Attorney General was restricted by the 1975 amendments. Before 1975, actions taken pursuant to an approved voluntary agreement were immune from prosecution under the antitrust laws. Subsection 708(j) limits the protection by granting only a defense against antitrust charges, and then only if the participant can show that the act was taken "in good faith" to develop or carry out an agreement and that he "fully complied" with all rules, regulations, and procedures related to the agreements.

3.5.3 Carrying Out Agreements

The 1975 amendments defined a large number of rules applying to the carrying out of agreements. In some instances, these rules were not new, but rather involved writing into law procedures that had always applied administratively. In sum, though, they represent a substantial body of requirements.

Participants in agreements must agree to substantial disclosure of information. They must agree to maintain "documents, minutes of meetings, transcripts, records, and other data related to the carrying out" of the agreement (Subsection 708(h)(1)). All of this information must be made available to the Justice Department and the FTC and, through these agencies, to the public under the provisions of FOIA (Subsections 708(h)(2) and (3)).

Reasonable notice of any meeting to carry out an agreement must be provided to the Justice Department and the FTC, and they may have a representative attend any meeting (Subsections 708(h)(4) and (6)). In any event, at least one full-time Federal employee must be in attendance (Subsection 708(h)(5)).

Although Justice and FTC representation is not required at every meeting, these agencies are required to monitor each agreement to make sure that:

- The agreement is being carried out under the prescribed rules and for the prescribed purpose
- The participants are acting in accordance with the terms of the agreement

and to ensure "the protection and fostering of competition and the prevention of anticompetitive practices and effects" (Subsection 708(g)). They are also required to make surveys "for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power" (Subsection 708(k)).

Unless the meeting will be closed under a "trade secrets" or "national security" exemption, prior notice of the meeting must be published in the Federal Register and observers must be allowed to attend. If the meeting is to be closed, the notice must be submitted within 10 days after the meeting (Subsections 708(h)(7) and (8)).

The agreement can be cancelled at any time, but, in any event, can be approved for only a two-year period, after which it must be re-certified and re-approved (Subsections 708(f)(2) and (h)(9)).

3.5.4 Impact of 1975 Amendments

The 1975 amendments made it more difficult to establish voluntary agreements. Three different impacts of these amendments must be considered:

- Timing of establishment and scope of agreements
- Procedural obstacles to establishment or activation of agreements
- Barriers to corporate participation in agreements.

Timing and Scope - It is more difficult now than it was in the past to justify establishment of a voluntary agreement. The new requirement to find a "threat" to the national defense is more restrictive than the open-ended permission formerly granted. Moreover, the new requirement for two separate approvals by the Attorney General before an agreement can be activated could substantially delay activation of an agreement.

These built-in delays in establishing an agreement during an emergency could be critical. From a standing start, it would take a minimum of several weeks to develop and activate an agreement. If the Attorney General required substantial justification or review, the development process could stretch out to a much longer time.

This suggests that, at a minimum, establishment of standby voluntary agreements should be a high priority if sponsors believe they will need these agreements during an emergency. Although there is no separate authorization or procedure for establishing standby voluntary agreements, the reader of the DPA can assume that a "standby" agreement would be one that has proceeded through the development phase and has simply not been activated. (Thus, development of a standby voluntary agreement would still require the prescribed findings and the Attorney General's dual approval.) As has been seen in recent efforts to re-certify the tanker capacity agreement, the time required to establish this agreement -- even allowing for the lack of urgency and the participants' unfamiliarity with procedures -- is discouraging to the planner who contemplates pursuing the program under emergency conditions.

Procedural Obstacles - The procedural requirements for developing and implementing an agreement are substantial. The 1975 amendments were consciously written by Congress as "model" antitrust and open-government legislation. The requirements for public notice, public attendance, maintenance and disclosure of records, and public comment clearly reflect a desire to restrict activities, not a desire to promote such activities in the national defense interest. These procedural requirements could significantly delay development and activation of agreements.

Corporate Participation - A number of changes in the 1975 amendments could limit the willingness of companies to participate in an agreement. The limited immunity from the antitrust laws could be unacceptable to some companies, who might be unwilling to expose their officers and employees to even limited risk of subsequent prosecution for activities taken under a voluntary agreement.

Participants would also be subject to extensive requests for disclosure of documents. The citation of FOIA exemptions as a basis for withholding documentation is especially significant; court interpretations have consistently held that FOIA is intended to be pro-disclosure, and that, when doubt exists, documents should be released. The exemptions cited, especially the trade-secrets provision, are far from watertight guarantees of confidentiality for participants' records. The risk of being forced to disclose trade secrets to competitors, either as part of the agreement or as a result of making records available to the government, may limit the willingness of companies to participate.

The requirements for open meetings could also limit the willingness of companies to participate. In the 1950s, only government employees and participants in the agreement were permitted at meetings; furthermore, membership in agreements was strictly limited. Thus, if any trade secrets or proprietary methods were discussed or disclosed, the knowledge of these practices was limited to a select group, all of whom were bound by the terms of the voluntary agreement. Open meetings, while providing the "accountability" desired by Congress, could also broaden this disclosure. Besides the risk of public disclosure, participants might fear that their secrets would be released to competitors who are not participating in the agreement and are not bound by the agreement. For instance, international competitors who are not participating in American rearmament could gain substantial intelligence about capabilities, plans, conversion strategies, etc., that could help them penetrate American markets or learn trade secrets of the participants.[46]

A final assessment of the feasibility of establishing agreements under the current requirements can only be made

after completion of subsequent tasks under this contract. The issues raised in this section will be considered during the industry analyses and industry workshops, and final recommendations as to the need for modifying Section 708 will be presented in the draft final report.

3.6 SUMMARY

This chapter has described briefly the development and implementation of Defense Production Act authorities to allow cooperative actions by industry and consultation between industry and government. This review has shown that:

- As in past mobilizations, industry was granted broad authority to engage in cooperative activities and to consult with the government in the interests of the defense program
- During the Korean War, for the first time, industry advisory committees and voluntary agreements were regarded differently, and were authorized by separate sections of the Defense Production Act. However, many of the same procedural requirements applied to voluntary agreements were also applied to advisory committees
- Extreme concern was expressed from the initial consideration of the DPA about the possible impact of these authorities on small business and the risk that the authorities would permit collusion between large firms and government favoritism toward these firms
- This concern led to much stricter scrutiny of these programs during the Korean War than in past mobilizations and also accounts, in part, for the steady trend toward restricting

authorities for these programs. Presently, both the Defense Production Act and the Federal Advisory Committees Act establish strict procedural limits on operation of advisory committees and voluntary agreements

- Activity under and participation in these programs began to decline rapidly once the Korean War emergency began to abate. While new restrictions adopted by Congress in 1955 made it procedurally more difficult to establish and continue these programs, it the lack of interest in the programs, rather than the altered legislative environment, which accounted for the diminishment of their utilization

- New requirements enacted in 1975 pose substantial procedural barriers to widespread implementation of these authorities, but do not preclude their use. Changes in the authorizing legislation would undoubtedly be needed during an emergency if the executive branch contemplated widespread use of these authorities, but, if time is not a major consideration, the authorities can be used to establish programs.

ENDNOTES

1. House Report No. 2759, pp. 22-23, as cited in memorandum of December 6, 1984, from Richard Murray to Leon Reed, p. 23.

2. Ibid., p. 2.

3. Ibid. In his article "Antimonopoly Policy During Rearmament" (American Economic Review, May 1952, pp. 404-437), Corwin D. Edwards of the FTC noted that --

> In one respect, however, the outlook for effective use of the law during the present emergency is rosy compared with the experience of the second World War. No administrative barriers to law enforcement have been imposed upon the antimonopoly agencies.

4. Public Law 395 of the 80th Congress (Ch. 526 61 Stat. 945), approved December 30, 1947, was intended "to aid in stabilizing the economy of the United States, to aid in curbing inflationary tendencies, to promote the orderly and equitable distribution of goods and facilities, and to aid in preventing maldistribution of goods and facilities which basically affect the cost of living or industrial production." Section 2 of this law permitted the President --

> to consult with representatives of industry, business, and agriculture with a view to encouraging the making, by persons engaged in industry, business, and agriculture, of voluntary agreements approved by the President--
> (1) providing for allocation of transportation facilities and equipment;
> (2) providing for priority allocation and inventory control of scarce commodities which basically affect the cost of living or industrial production; or
> (3) providing for regulation of speculative trading on commodity exchanges.

(This authority for voluntary agreements expired March 1, 1949, less than one and one-half years after approval. We found no records indicating this authority was used.

Its principal effect appears to have been the invention of a new term -- voluntary agreement -- which was carried forward in the DPA.)

5. Congressional Record, August 15, 1950, p. 12717.

6. The conference report accompanying the Defense Production Act contained the following description:

> Both the House Bill and the Senate amendment contained provisions exempting from the prohibitions of the antitrust laws of the United States or the Federal Trade Commission Act actions taken at the request of the President and found by him to be in the public interest as contributing to the national defense. The Senate amendment, in a subsection which was not included in the House Bill, placed emphasis upon consultation of the President with representatives of industry, business, financing, agriculture, labor, and other interests with a view to encouraging the making by such persons, with the approval of the President, of voluntary agreements and programs to further the objectives of the act. The Senate amendment further provided that any official authorized to approve requests for exemptions from the antitrust laws or the Federal Trade Commission Act in relation to a program of voluntary agreements shall be approved by the Senate unless otherwise required to be so appointed. The conference substitute contains the language of the Senate amendment with an amendment requiring that the prior approval of the Attorney General be obtained for any request under which exemption would be given in accordance with the provisions of this section. (Murray, op. cit., p. 4.)

7. Letter from The Honorable Stanley N. Barnes, Assistant Attorney General, Antitrust, to the Honorable Emmanuel Celler, U.S. House of Representatives, June 20, 1955, contained in U.S. Senate, Committee on Banking and Currency, hearing on "Defense Production Act Amendments of 1955," Government Printing Office, Washington, 1955, p. 125.

8. Testimony of Stanley N. Barnes in ibid., pp. 82-86.

9. Ibid., p. 83.

10. Ibid., p. 84.

11. Cited in Murray, op. cit., p. 8.

12. Department of Justice submission, printed in U.S. Congress, "First Annual Report of the Joint Committee on Defense Production," Government Printing Office, Washington, 1951, pp. 305-6. Four of the six agreements examined in Chapter 4 of this report (small arms, B-47, credit restraint, and tanker capacity) were on this original list.

13. SDPA submission, printed in U.S. Congress, "Third Annual Report of the Joint Committee on Defense Production," Government Printing Office, Washington, 1954, p. 229.

14. Quoted in Department of Justice submission in "First Annual Report," op. cit., p. 309.

15. Letter from Peyton Ford, Deputy Attorney General, included in ibid., p. 310.

16. Ibid.

17. Department of Defense submission in ibid., pp. 319-320.

18. Ibid., p. 320.

19. National Production Authority submission, printed in ibid., p. 192.

20. Ibid.

21. Ibid., pp. 192-193.

22. Department of Justice submission, ibid., pp. 310-311.

23. Letter from The Honorable H.G. Morrison, Assistant Attorney General, to the Secretary of Commerce, printed in ibid., p. 311.

24. Letter from The Honorable J. Howard McGrath, Attorney General, to the Honorable Charles E. Wilson, Director of the Office of Defense Mobilization, in ibid., p. 311.

25. Ibid., p. 312

26. Ibid.

27. Ibid.

28. Ibid., pp. 313-314.

29. NPA submission to "Second Annual Report," op. cit., p. 488.

30. NPA submission to "Third Annual Report," op. cit., p. 119.

31. Testimony in "1955 Amendments," op. cit., p. 155. Representative Celler argued that the changes in the nature of the emergency suggested that the authority was no longer needed:

> We have, of course, recognized that in times of dire emergency, certain exceptions to our antitrust laws and free competition must be made just as during such periods certain exceptions to the personal liberty and freedom of individuals occur. To be perfectly frank, as the price of survival, we have had no choice. Wartime, unfortunately, has therefore been a catalyst which has stimulated the development of monopolies and retarded the growth of competition... But, gentlemen, isn't that all the more reason for removing monopoly restrictions and preventing further restraint of trade just as rapidly as we can upon the termination of a wartime crisis? As a matter of fact, the cold war may go on for decades. The President implied that only recently. Abolition of the Sherman Act should not, therefore, become a fixed policy. The Sherman Act should not be repealed by attrition." (Ibid., pp. 104-105.)

The House Judiciary committee institutionally, and particularly its chairman, Representative Celler, always favored limits on industry-government cooperation even during emergencies. Representative Celler consistently expressed serious concerns about three related programs to foster government-industry interchanges:

- The voluntary agreements program
- The use of industry advisory committees
- Employment by government agencies of "Without Compensation" (WOC) employees, the 1950s equivalents of the WWII "dollar-a-year men."

Rep. Celler sponsored the 1951 hearings (discussed in Section 3.2.2) and also, in 1951, presented a speech to the Department of Commerce Business Advisory Council that was highly critical of past and present mobilization policies. He noted:

- "One of the most alarming consequences of a mobilization period is the demise of innumerable smaller enterprises throughout the country and the concomitant growth of the concentration of economic power among the few largest corporations ..."

- "One of the first reactions to an approaching emergency period is that the antitrust laws should be temporarily scrapped, lock, stock, and barrel. Anomalous it is that whenever the United States has indicated its intentions of fighting to preserve the free enterprise system, a movement grows to abandon the principles of the very statute which guarantees a free and competitive economy." (Address to the Business Advisory Council, January 17, 1951, reprinted in U.S. House of Representatives, "WOC's and Government Advisory Groups," Hearings before the Antitrust Subcommittee, Committee on the Judiciary, August 10, 1955, pp. 1009-1015.)

At the same time as his testimony opposing extension of Section 708, Rep. Celler also held extensive Judiciary Committee hearings that were extremely critical of the other two forms of interchange, temporary WOC employees from industry and advisory committees. His concerns, and those of other like-minded officials, were instrumental in setting the original DPA limits on voluntary agreements, the regular criticism of the programs during the emergency, and the new limits adopted in 1955. Although Rep. Celler no longer is a member of Congress, his viewpoint reflects a predictable opposition to unconstrained industry-government contacts, even during emergencies, and to perpetuation of even relatively constrained wartime programs in a peacetime environment.

32. Rep. Celler agreed in his testimony that "if you nail it down," he could support extension of Section 708 if it applied only to "military procurement items." ("1955 Amendments," op. cit., p. 120)

33. Subsection 708(b) of the Defense Production Act Amendments of 1955.

34. Since the August 9, 1955, approval of the DPA amendments described in Section 3.3.1, only five new voluntary agreements have been approved under the authority of the DPA. Two of these -- the Army Aircraft and Maintenance agreement and the Air Force J-57 Engine Production Committee -- were already in process of development, and were approved by the Attorney General on August 17 and October 6, respectively. (The J-57 committee was never activated, and the requests for participation were withdrawn early in 1956.) The other three agreements established since these amendments are the International Energy Agreement (established in 1975 and currently authorized under separate legislative authority), the M-14 Rifle Integration Committee (discussed in Section 4.5), and the Committee on Improved Conventional Munitions (approved in 1972 but, from available evidence, never very active).

35. Cited in "Report of the Attorney General Pursuant to Section 708(e) of the Defense Production Act of 1950, as Amended," May 9, 1956, reprinted in U.S. Senate, Committee on Banking and Currency, "Report of Voluntary Agreements Program Under the Defense Production Act," Government Printing Office, Washington, August 10, 1956, p. 4.

36. Ibid.

37. Ibid., p. 5.

38. Printed in U.S. Senate, Committee on Banking and Currency, "Review of Voluntary Agreements Program Under the Defense Production Act and Related Material," Government Printing Office, Washington, December 6, 1956, p. 30.

39. U.S. Senate, Committee on Banking and Currency, "Review of Voluntary Agreements Program Under the Defense Production Act: Report Dated February 9, 1957 by the Attorney General," Government Printing Office, Washington, February 13, 1957, p. 26.

40. See, e.g., ODM submission to U.S. Congress, "Fifth Annual Report of the Joint Committee on Defense Production," pp. 100-102.

41. U.S. Senate, Committee on Banking and Currency, "Expanding the Mortgage Market, Report to Accompany S. 2577,"

Government Printing Office, Washington, 1969, pp. 11-12. In point of fact, the committee may not have accomplished this purpose, despite its clear intent to do so. The committee intended to allow use of these authorities as part of a general inflation-control program. However, ever after the amendments, voluntary agreements were limited to "programs to further the objectives of this Act." While maintaining defense preparedness is a purpose of the DPA, stabilization of the economy and controlling inflation are not. Thus, credit controls -- or similar voluntary economic control programs -- would undoubtedly be permitted under the DPA if clearly related to mobilization or defense preparedness, but only a weak case could be made for applying these authorities to general economic problems. Advocates of purely-economic programs could cite Congress' clear intent in support of their position, but would face the apparent limit of the Act's scope to national security purposes.

42. As of July 1, 1975, there were only eight voluntary agreements: the active Foreign Petroleum Supply Agreement; the inactive Tanker Capacity agreement; four active agreements sponsored by the Army Armaments Command; one standby agreement sponsored by the Army Tank-Automotive Command; and the international energy voluntary agreement, which had just been activated in March 1975 (U.S. Congress, "Annual Report of the Joint Committee on Defense Production, 1976," Government Printing Office, Washington, 1977, Volume I, p. 24.

43. U.S. Congress, "Annual Report of the Joint Committee on Defense Production, 1975," Government Printing Office, Washington, 1976, p. 51.

44. As with the 1969 credit control amendment, the 1975 DPA amendment to restrict the oil agreement was essentially meaningless in accomplishing its principal intent. The DPA amendments provided that the oil agreement authorization would become null and void if EPCA were approved -- in that event, the agreement would switch to authorization under EPCA. EPCA was approved on December 22, 1976, only 6 days after the DPA amendments.

45. The version of Subsection 708(c)(1) originally introduced in the Senate required a finding that "an imminent or probable danger to the national defense exists" before a voluntary agreement could be established. The scope of voluntary agreements would be limited to "programs ... to insure productive capacity

in the event of an attack on the United States." This would clearly preclude peacetime uses of voluntary agreements.

Separately, the original amendment provided that "the Attorney General and the Federal Trade Commission shall participate from the beginning in the development, implementation, and carrying out ..." of voluntary agreements. It also required that the Attorney General certify the national defense need for voluntary agreements before sponsors could develop them.

In his testimony, FPA director Bray raised three objections to the committee proposal: 1) the limited scope and timing of voluntary agreements; 2) the substantive program role provided for the Department of Justice; and 3) the failure to exempt national security information from disclosure. Senator William Proxmire, chairman of the Banking Committee and author of the 1975 admendments, agreed to make the changes requested by FPA, and the committee report on the bill stated that its intent in making these changes was:

- "...to give the President the flexibility to seek voluntary agreements in emergency situations short of war or mobilization"

- to confine the role of the Attorney General and the FTC "to establishing rules and procedures and to examining the anticompetitive implications of voluntary agreements and programs, thus removing them from the substantive decisions about the agreement and programs which are more properly the province of the Federal officials designated by the President to carry out the voluntary agreement authorities conferred on him by the Act."

These Senate committee changes were adopted by the conference. As a result of these FPA-proposed changes, the current authorization for voluntary agreements, while procedurally complex, is very flexible on a substantive level. In view of the importance of these decisions to the possible revival of the program, Appendix D reprints excerpts from the FPA testimony at the hearings, from the colloquy between Senator Proxmire and Mr. Bray, and from the committee report describing the committee's intent in making these changes.

46. Of course, the ultimate absurdity would be if representatives of hostile foreign interests attended the meetings. Unless the meetings were closed, these representatives would be free to attend meetings, and, indeed, could offer comments and testimony at the initial meetings where the agreements are being established.

4. EXAMINATION OF SIX VOLUNTARY AGREEMENTS

4.1 INTRODUCTION

This chapter examines six voluntary agreements to provide a better understanding of the purposes served by and the effectiveness of voluntary agreements in strengthening the defense industrial base.

4.1.1 Purposes of a Voluntary Agreement

While the basic purpose of a voluntary agreement -- to facilitate the exchange of technical information or other cooperative activities among competing firms and the Government -- is the same in all cases, the Korean War-era agreements can be divided into four categories:

- Integration committees
- Production committees
- Production pools
- Miscellaneous agreements.

The shades of difference among these categories are described below.

The voluntary agreements created and administered by the Army were called integration committees. The general functions of these committees, described in the Army's "Ordnance Procurement Instructions," were to:

- Provide for the interchange between contractors of information regarding production techniques and processes
- Consider and make recommendations with respect to problems of production and supply of materials and components
- Consider and recommend measures for the best integration of the facilities of several manufacturers so as to attain maximum efficiency in the utilization of such facilities.[1]

A fundamental purpose of these committees was the standardization of parts designs and production processes. In fact, after the initial surge of munitions production for the Korean War, enhanced interchangeability of parts, rather than rapid production, became the paramount purpose for continued committee activities. Two integration committees, the M-14 rifle and munitions committees, are examined in this chapter.

The voluntary agreements created and administered by the Air Force were called production committees. A production committee was used to achieve early output of a critical item from additional sources by having the original designer and developer of a system educate one or more other firms about production of that system. (In this regard, a production committee is similar to the leader-follower contracting procedures described in Section 5.3.) The production committees also served to keep all producers of a given item abreast of any improvements or changes in specifications. This applied to changes suggested by the additional producers, as well as the original designer. As in the case of integration committees, the production committees also promoted standardization and, therefore, interchangeability of parts. The B-47 Production Committee is examined in this chapter.

While integration and production committees were created primarily to speed production and increase standardization, the third category of voluntary agreements -- production pools -- was intended to grant small businesses better opportunities for winning defense contracts. The idea was that the pooled resources of small businesses would be adequate to win and perform defense contracts in cases where those resources of an individual small firm were inadequate to the task. In practice, this concept did not pan out, as the numerous small-business pools proved unsuccessful in obtaining defense contracts.[2] Therefore, we do not examine a production pool in this chapter, although we do discuss small business pools further in Section 5.1.

Finally, agreements that did not fall into any of the first three categories were grouped under the heading miscellaneous agreements. These agreements were sponsored by a number of different Federal agencies and generally involved industries and problems of broad economic scope, rather than just defense production.

The "miscellaneous" agreements represented a small portion of the total number of voluntary agreements approved during the Korean conflict. However, they were among the most important in the process of mobilizing the economy. Among the categories of voluntary agreements, these came closest to the World War I-type "industry self-regulation." Unlike the integration committees and production committees, each of which was similar to others in the same category, the miscellaneous agreements covered a broad range of purposes. They involved cooperative industry efforts to deal with such issues as stabilization of steel prices, saving of newsprint by Boston papers, credit restraint, foreign petroleum supply, and petroleum tanker capacity. The last three agreement programs are examined in this chapter.

4.1.2 Effectiveness of Voluntary Agreements

With the exception of the small-business production pools, voluntary agreements were generally recognized as being effective tools for achieving their defined goals. The primary goal in most cases was to speed production output during the Korean conflict and the Cold War years immediately following that war. In other words, these agreements were created to respond to emergency defense production requirements. However, as production of most defense items began to taper off following the end of the Korean conflict, the goal of most remaining agreements[3] gradually shifted more in the direction of standardization. Whereas standardization had been a means of achieving greater defense output, it eventually became an end in itself. This end was insufficient justification for continued activity of all but a few of the remaining committees. So, only a few of the "active" committees met with some regularity during the late 1950s and early 1960s. The others were maintained in a less active or standby capacity to permit an immediate response in the event of an emergency.

Miscellaneous agreements served a diverse set of purposes. Generally, these agreements involved either industries indirectly supporting defense production (e.g., tanker and oil supply agreements) or industries essential to the general operating of the economy (e.g., steel price restraint and credit restraint). Most of these agreements had been dissolved by the mid-1950s with the end of the conflict.

The history of the production-oriented voluntary agreements suggests that their utility is limited primarily to an emergency requiring a rapid and concerted effort by industry. In the absence of such an emergency, production goals

can be met through other means that do not raise as many anti-trust problems. Although there may be an occasional need to activate an agreement in a peacetime, business-as-usual environment, there is not likely to be an urgent, widespread need in the absence of an emergency. (Chapter 6 discusses general situations where active voluntary agreements might be used.)

Miscellaneous agreements may be even more important than in the past. Voluntary agreements unrelated to production could be effective in pursuit of economic and preparedness goals. In cases where the connection to national security is weak, it would be difficult to justify the program under the DPA, but, where the agreement directly supports defense preparedness, it could be an effective instrument of economic, trade, or national security policy. Agreements could substitute for, or supplement, direct government controls. If miscellaneous agreements are not used in peacetime, it would nevertheless improve their emergency effectiveness if standby agreements were established. Indeed, in view of the much broader scope of these types of agreements, it could be much more important to establish standby peacetime agreements, if only to clarify their likely scope and purpose.

This leads us to conclude that <u>standby</u> voluntary agreements can be an effective means of improving industrial responsiveness, because they would reduce or eliminate the administrative time needed to create a voluntary agreement which would otherwise delay cooperative industry activities during an emergency. Active voluntary agreements during peacetime can also be an effective means of speeding production and reducing defense acquisition costs, but many of these advantages can be achieved through other means.

4.2 VOLUNTARY CREDIT RESTRAINT AGREEMENT

4.2.1 Purpose of the Agreement

The purpose of the Voluntary Credit Restraint Agreement was to assist in stabilizing the economy and controlling inflation by limiting the growth of credit and by channeling credit from nonessential to essential, defense or defense-supporting uses.[4] To accomplish this, the Committee established general criteria and guidelines for acceptable business loans and promoted establishment of regional committees of financial institution representatives to review and comment on the appropriateness of individual financing proposals from business. (Subsequently, the Committee also screened proposed state and local bond issues.)

While they recognized that the program was voluntary, and therefore could not be completely effective, its proponents -- financial institutions and the Federal Reserve System -- believed that a voluntary program could help restrain nonessential borrowing. The sponsors recognized that conventional lending criteria would be ineffective -- that a credit restraint program would have to involve screening loan applications not only for credit-worthiness, but also as to purpose.[5] It was also felt that individual credit restraint initiatives by financial institutions would be ineffective because prospective lenders could "shop around" for loans.[6] Concerted action with consistent guidelines was needed.

The sponsors recognized important distinctions between this form of credit restraint and other credit controls:

> In contrast to general measures which influence the over-all supply of credit, and selective restraints which influence the demand for specific types of credit through regulation of loan terms and conditions, the Voluntary Credit Restraint Program seeks to direct the flow of credit away from nonessential and speculative uses by the voluntary action of lenders in approving or disapproving applications for funds.[7]

Besides stabilizing the money supply, controlling the growth of debt, and channeling capital to defense-related projects, the program was considered to have several other beneficial effects. First, it would facilitate materials-control programs by restraining hoarding and speculative inventory growth.[8] Second, by deferring a large number of worthy projects, it would create a backlog of private investment and public works projects that could serve as a healthy stimulus at a later date, when defense spending inevitably declined.[9]

Voluntary action was considered necessary for a number of reasons. First, it was argued that across-the-board regulations, as were issued for consumer and real estate credit, would be ineffective. The chairman of the national committee of the credit restraint program testifed that, whereas consumer and real estate credit controls dealt with a large volume of relatively uniform transactions,

> ...the voluntary credit restraint program deals with a great multitude of transactions which are tailor-made by the institutions to the needs of the borrowers. They are not uniform on the whole, and I am very sure it would be quite impossible to put them under a regulation.[10]

Sponsors of the program also argued that voluntary action was more effective because judgment was required and because the voluntary program was more effective in promoting cooperation by financial institutions.[11]

More fundamentally, however, the Defense Production Act did not authorize mandatory controls of business credit. Title VI authorized mandatory controls only for consumer and real estate credit.[12] If mandatory controls over business credit had been desired, new authority would have been necessary.

4.2.2 Creation and Functioning of the Agreement

The process leading to establishment of the Voluntary Credit Restraint Program started with a meeting held on December 19, 1950, at the Federal Reserve Bank of New York. This meeting was attended by representatives of the Federal Reserve System and the New York Federal Reserve Bank, the American Bankers Association, the Investment Bankers Association of America, and the Life Insurance Association of America.[13] Although the meeting was formally requested by the Board of Governors of the Federal Reserve System and convened by the President of the New York Federal Reserve Bank, the suggestion for such a voluntary agreement was first made by bankers.[14]

After the meeting, a subcommittee was appointed of two representatives of each association represented at the meeting. With the assistance of the Federal Reserve, the group made recommendations for a program, which were approved on February 2, 1951.[15] After consultation with the Attorney General and the Chairman of the FTC, the Board of Governors issued a request for participation in the credit restraint

program on March 9, 1951. Besides the three original attendees, letters were also sent to the National Association of Securities Dealers and the American Life Convention, asking them to consider the program and cooperate with its aims.[16]

The Board appointed a National Voluntary Credit Restraint Committee made up of four representatives each of commercial banks, insurance companies, and investment banks. (Two representatives each of savings and loan associations and mutual savings banks were subsequently added to the national committee.) A member of the Board of Governors chaired the committee.[17]

From the outset, it was stressed that this was a private sector initiative. At the first meeting of the national committee, Federal Reserve Board Chairman Thomas B. McCabe emphasized that the Fed's role was limited to monitoring the agreement to protect the public interest. The initiative would rest with the financial institutions.[18]

According to later statements, there was initial skepticism on the part of many bankers about the viability of the program, at least in part because no such program had ever been attempted.[19] (However, during World War I, there had been a Capital Issues Committee, which had exercised some functions similar to the credit restraint committee.)[20]

In its statement of principles, the committee stated that the purpose of the agreement was to assist financial institutions --

> ...to help maintain and increase the strength of the domestic economy through the restraint of inflationary tendencies and at the same time to help finance the defense program and the essential needs of agriculture, industry, and commerce.[21]

To accomplish this purpose, the Committee regarded the following types of loans as being proper:

- "Loans for defense production, direct or indirect, including fuel, power, and transportation
- "Loans for the production, processing, and orderly distribution of agricultural and other staple products...
- "Loans to augment working capital where higher wages and prices of materials make such loans necessary to sustain essential production, processing, or distribution services
- "Loans to securities dealers in the normal conduct of their business or to them or others incidental to the flotation and distribution of securities where the money is being raised for any of the foregoing purposes."[22]

It was also clarified that the program would not attempt to restrict loans guaranteed, insured, or authorized as to purpose by the federal government and would not restrict financial institutions in honoring previous commitments. Two types of loans specified as undesirable in the initial statement were loans to retire or acquire corporate equities in the hands of the public and speculative investments.[23]

The purpose of the national committee was to formulate general lending statements and policies that could be applied by financial institutions. To carry out its work, the national committee appointed a total of 43 regional subcommittees, made up of representatives of the types of financial institutions participating in the program. The purpose of these regional subcommittees was to pass information on to individual financial institutions and to consult with these

financial institutions on individual loan applications to determine their appropriateness.[24] Although neither the national committee nor the regional subcommittees had any enforcement power, it was stated that

> ...they can and do exert considerable influence on the thinking and decisions of lending officers and upon prospective borrowers who know of the Program and are in sympathy with its principles and objectives.[25]

To help local financial institutions evaluate the merits of loan applications, the national committee issued a number of general policy statements. Its first statement, issued March 19, 1951, was merely a general statement of principles, but later bulletins prescribed criteria for specific types of loans.[26] Lending areas selected for bulletins were those where actual or anticipated credit expansion was substantial, statutory credit restraints did not apply, and the participating financial institutions were dominant lenders.[27] (See Appendix G for documents issued by the Credit Restraint Committee.)

Although the public record suggests that the program was reasonably effective, popular with financial institutions, and reasonably well-accepted by borrowers, it suffered from serious political problems. These political problems hastened the program's demise.

At a March 1952 hearing by the Joint Committee on the Economic Report, the chairman of the national committee testified that he expected the program to continue operations throughout 1952, at least. He argued that although inflation had been reduced, the continuing deficit required continued credit controls, and that lenders would have "to screen new financing projects more carefully than ever."[28]

However, then as now, "Fed-bashing" was a popular sport, and the program, and the Federal Reserve's sponsorship, were criticized by several congressmen at these hearings.[29] Particular objections were raised about

- The perceived inequity of subjecting consumer and real estate loans to mandatory controls while business loans were subject to only voluntary controls
- The perception that bankers might be getting favored treatment by being shielded from potential regulations
- The absence of public representation or of any public officials subject to either the President or Congress in the leadership of the committee.

By early 1952, the entire economic controls program was unpopular. Public sentiment generally regarded the controls as being excessive in the face of an increasingly confusing and unpopular war. As early as 1951, Congress had substantially watered down the wage-price restraints in the Defense Production Act, and the pressure to relieve controls continued through 1952. Opposition to controls became a major political issue in the subsequent presidential campaign, and, upon the inauguration in 1953 of an anti-controls Republican administration, all remaining authorities for economic controls were allowed to die.

The credit controls program apparently fell victim to these specific and general objections. While the 1952 DPA amendments approved by the Senate continued Title VI credit controls authority, the House version repealed Title VI entirely and also added a new Subsection 708(f) to prohibit credit restraint voluntary agreements. The final version of the 1952 amendments, signed by President Truman on June 30,

1952, repealed Title VI authorities for controlling consumer credit while retaining real estate credit controls, and also included the proscription against voluntary agreements for control of credit. By the time the bill was signed, this was a moot point. On May 2, 1952, the national committee recommended to the Fed that the program be suspended, and on that date the Federal Reserve Board suspended the program, effective May 12.[31]

4.2.3 Effectiveness of the Agreement

As with other voluntary agreement programs, it is difficult to measure precisely the effectiveness of the credit restraint program. The program's sponsors freely acknowledged that it was difficult to separate the impact of the voluntary credit restraint program from other control measures and that it was difficult to determine what economic conditions would have been in the absence of these programs. In its Bulletin, the Federal Reserve Board stated:

> It is not possible to measure in quantitative terms the factors that have contributed to the lull in general business activity and to the declines in some commodity prices in recent months. Doubtless many factors are involved including the apparent improvement in the military situation in Korea, some waning of the war psychology which was so prevalent a year ago, a decline in consumer buying from the record levels of the 'scare-buying' days, abundant crops of important agricultural commodities, increased taxes enacted last year, the imposition of some measure of restraint on wage and price increases, and the great productive power of American industry which permitted the accumulation of record levels of business inventories. While recognizing the importance of these underlying factors, the Committee was of the opinion that developments in the credit field, including the

> Voluntary Credit Restraint Program, have also made an important contribution to the recent easing of inflationary pressures.[32]

The committee pointed out that the program's goals were limited:

> The objectives of credit measures are not to prevent the necessary and desirable use of credit, but to attempt to stop the use of credit for speculative purposes, to channel credit into defense and defense-supporting activities, to reduce the credit made available for postponable and less essential civilian purposes, and to engender a more cautious and careful lending policy on the part of lending officers. The Voluntary Credit Restraint Program is making an important contribution to the attainment of these objectives.[33]

One of the most important contributions of the program, its sponsors believed, was simply to provide "new benchmarks" for lending officers.[34] Because defense spending was still a limited percentage of total national spending, lending to non-defense uses could not, and should not, be curtailed entirely. Thus, judgment was needed to determine appropriate types and amounts of loans; the program could provide assistance in making these judgments.

The committee noted that:

> ...declines are evident in commitments for nondefense purposes, while some rise is noticeable in the case of defense and defense-supporting activities.[35]

Summary statistics prepared near the end of the program's existence showed that:

> ...new loans granted to manufacturers of metals and metal products and to public utility and transportation concerns were substantially greater from midyear through October 1951 than in the corresponding period of 1950. On the other hand, the amounts granted to wholesale and retail trade concerns, commodity dealers, and sales finance companies were substantially less this year than last...[36]

Besides general trend statistics, program supporters also used "seat of the pants" reasoning to support the program's effectiveness. In his testimony before the Joint Committee on the Economic Report, committee chairman Powell argued that even statistics on volume of loans turned down by financial institutions following negative findings by the committees would understate the impact:

> We hear of many cases where a prospective borrower decides after discussion with his banker not to apply for the loan. Other proposed loans have never come out of the director's room of the interested corporation. At the same time, there is fragmentary information in our files from annual reports and other sources that commercial banks have denied or postponed nonessential credits in large amounts -- $7 million, $10 million, $27 million -- at individual banks.[37]

The most elaborate analysis of general credit trends was a report on "Impact of Voluntary Credit Restraint Program on Demand for and Supply of Credit," presented as an appendix by Mr. Powell in the Joint Committee hearings (pp. 484-504). Some information presented in this report included:

- "Despite the record 1951 volume of corporate security issues for new capital, a smaller proportion was accounted for by companies engaged in real estate, finance, commercial, and

miscellaneous activities than in any of the previous 3 years... Moreover, a smaller proportion of corporate security issues during 1951 were to provide funds for the retirement of bank debt and miscellaneous purposes -- and a larger proportion to finance expansion of plant and equipment -- than in other postwar years...

- "...shifts in the relative importance of various types of construction expenditures...suggest that the combination of material shortages and building restrictions, credit-restraint measures, and bond referenda have succeeded in diverting funds, labor, and materials into more essential projects

- "Primary objectives of the voluntary credit restraint program have been to curtail the use of credit for speculative purposes and to divert funds from non-essential uses... Data collected from a sample of about 220 weekly reporting member banks...suggest that commercial banks are contributing actively to the realization of these objectives

- "Defense and defense-related businesses... were an important factor in business credit demand at banks in the last half of 1951. These industries...together accounted for about half of the business loan expansion during this period... [Non-defense] loans were much smaller than a year earlier when borrowing for non-defense purposes...was the dominant element in the increase in bank loans, while defense borrowing was still small. Thus far in 1952, loans to metal manufacturers have increased sharply while loans to other businesses have declined

- "There was...a marked downward trend during 1951 in monthly acquisitions of real estate mortgages by life insurance companies... It appears that the voluntary credit restraint program, in conjunction with other monetary and credit

> restraint measures, has encouraged the progressive diversion of life insurance company investment funds to purposes deemed essential to the defense effort."

Obviously, it is impossible to separate the impact of the voluntary credit restraint measures from other monetary and fiscal policies. Indeed, the Federal Reserve Board and the committee stressed that the program was effective only as an adjunct to general credit restraint measures.[38] Nevertheless, the impressions and the selected statistics suggest that the goals of the voluntary credit restraint program were largely accomplished, in relatively short order, for whatever reason. The view of participants that these goals could not have been accomplished by other measures, without the supplemental effect of the voluntary program, is a compelling reason to conclude that the program did accomplish its goals.

From the government's as well as the private sector's point of view, accomplishment of these goals through voluntary means was highly desirable. Even if the same goals could have been accomplished through regulations, this would have required substantial effort. An amendment to the DPA would have been needed; this might have been difficult to obtain, from an increasingly anti-controls Congress. Even if authority were made available, implementation of the authority would have required development of a substantial regulatory and enforcement mechanism that may not have been as effective as the voluntary method. Thus, the voluntary credit restraint program appears to have been an effective tool for controlling inflation, channeling capital to essential uses, and controlling hoarding.

4.3 B-47 PRODUCTION COMMITTEE

4.3.1 Purpose of the Committee

The B-47 was a six-engine jet medium-range bomber designed by Boeing Airplane Company in the mid-to-late-1940s. The first production version of the B-47 was completed by Boeing in 1950. To help meet the emergency conditions created by the Korean conflict, the Air Force chose to accelerate production of this aircraft by letting contracts for its production with both Douglas Aircraft Company and Lockheed Aircraft Corporation, in addition to Boeing.[39] However, it was recognized that the B-47 was radically different from the piston-powered bombers that had been produced previously and that production of this new aircraft would pose a myriad of new problems. The B-47 Production Committee was proposed to reduce these problems and to speed production of much-needed aircraft by permitting an exchange of technical information and coordination of production efforts among these three competing aircraft manufacturers.

The functions of the Committee, as set out in the plan for its formation, were:

- To facilitate the exchange of technical information about the B-47 among the three contractors and the Air Force. This exchange included the initial transfer of "engineering materials and information of all sorts," as well as the ongoing exchange of information regarding design modifications
- To consider technical problems as they arose in the course of production in areas such as:
  - -- Engineering changes and design modifications

-- Tooling, plant layout, and manufacturing methods

-- Standardization

-- Scheduling of parts manufacture and phasing of changes and modifications

-- Raw material and other supply shortages

-- Spare parts production

-- Subcontractors

-- Quality control.

4.3.2 Creation and Functioning of the Committee

The plan to form the B-47 Production Committee was proposed by the Office of Defense Mobilization (ODM)[40] at the request of the Department of Defense. After consultations among representatives of the Attorney General, the Federal Trade Commission, and the Office of Defense Mobilization, the Attorney General notified the Director of ODM in a letter dated June 28, 1951, that he approved plans to form the Committee. Letters were then sent by the Defense Production Administrator to Boeing, Douglas, and Lockheed, requesting their participation on the Committee.

The Committee operated full-time, with an Air Force colonel as chairman and one representative of each company co-located in Air Force offices in Wichita, Kansas. Its decisions were binding on the participants, if concurred in by the chairman (Air Force representative) when executive authority had been delegated to him. Otherwise, Committee recommendations were binding on the participants when approved by the appropriate Federal authority. While no substantive decisions in the areas of Committee jurisdiction could be made

outside of formal Committee meetings, the members of the Committee were given adjoining offices to permit close, informal contact on an ongoing basis. The plan of formation also allowed technical employees of the three companies to discuss B-47 production problems or to exchange technical information outside of formal Committee meetings. In practice, this allowed representatives of one company to visit another company's plant.

The Committee was deactivated by the Attorney General on May 31, 1957, after production of the last B-47E had been completed earlier that same year.

4.3.3 Effectiveness of the Committee

In a letter to the Attorney General requesting continued antitrust immunity for the B-47 Production Committee under Section 708 authority, the Air Force summarized the accomplishments of the Committee during its first several years of operation. The letter stated:

> It is our considered opinion that the Committee performed a service of the greatest value and that, in the absence of its control and coordination, the same or even comparable results could not have been obtained. Its principal accomplishment was to assure more rapid and more adequate flow of technical information, so that the operations of Douglas and Lockheed were more rapidly phased into the production program. We saved time when time was the decisive factor. There were definite economies, particularly in the area of master tooling. The vital objective of complete interchangeability was achieved and maintained from the very outset.[41]

The savings in master tooling are easily explained by the need for only one set of dies for each of many parts,

rather than three sets -- one for each manufacturer. However, most or all of this saving might well have been achieved in the absence of the voluntary agreement through use of common subcontractors or by simply subcontracting with each. In other words, antitrust immunity might not have been needed to achieve this saving.

The Production Committee undoubtedly assured a more rapid and more adequate flow of technical information, but an absolute measure of the benefit in this regard is impossible to derive. Today, a leader-follower contracting arrangement could be used to achieve much or all of the saving in time and cost accomplished by the B-47 Production Committee. This type of arrangement is described in Section 5.3.

4.4 VOLUNTARY AGREEMENTS RELATED TO FOREIGN PETROLEUM SUPPLIES

4.4.1 Introduction

Beginning in 1951 with a disruption of world oil flows originating in Iran, the Secretary of the Interior (and later the Department of Energy) has utilized voluntary agreements periodically to insure the continuous supply of oil to the United States and its allies. In 1951, 1956, 1967, and 1973, serious interruptions of world oil supplies have occured as a result of political or military disturbances in one or more of the principal oil exporting nations. Voluntary agreements have been activated during two of these crises. In addition, petroleum supply agreements provided nearly continuous informational and technical assistance to the government from 1951 to 1976. Much of the organizational apparatus created by voluntary agreements under the Defense Production Act continues

to exist as part of the International Energy Agency, of which the U.S. became a member in 1974.

The usefulness of voluntary agreements related to foreign-petroleum supply has spanned the spectrum of conflict. Instituted in April 1951 in response to an oil refinery strike in Iran, the voluntary agreement apparatus has been called upon for action in the event of nationalizations affecting the industry, threats to strategic lines of communication, and Middle-East wars. These agreements have also been used to provide data on energy consumption requirements for nuclear war plans. Voluntary agreements related to foreign petroleum supply were the first voluntary agreements to address world-wide integration problems.

Oil is in a very real sense, the life blood of modern industrial societies. Industries that supply it and its by-products are among a limited number of "strategic industries" whose interruption would seriously threaten industrial society.[42] This reality has not changed significantly in the last 30 years nor is it likely to change significantly in the next 30. What has changed, however, is that several strategic sectors have come to resemble the multinational petroleum industry. Due to this increasing multinationalization of the economy voluntary agreements may remain an important policy instrument.

4.4.2 Creation and Functioning of the Agreements

On June 30, 1943, President Roosevelt established the Petroleum Reserves Corporation (PRC) through the Reconstruction Finance Corporation. The purpose of the new agency was to acquire petroleum, petroleum products, and petroleum reserves outside the continental United States. Actions taken by the PRC would have constituted an important departure in U.S.

foreign economic policy, because they would have resulted in U.S. ownership of foreign oil properties. However, the PRC was unable to acquire the properties due to resistance from U.S. oil companies.[43]

In July 1948 the Secretary of the Interior asked the National Petroleum Council to draft a national petroleum policy. Along with its policy report, the Council submitted a second report recommending a national policy for times of national emergency. It suggested two fundamental principles that became and remained U.S. policy for two decades. First, since most of the facilities of the petroleum industry are useful only to that industry, they could be coordinated on a vertical basis without serious conflicts with other industries. Second, minimizing government controls of the petroleum industry would produce the best results. "In these two reports," writes Klebanoff, "are to be found in a nut shell the principles that were later worked out during the following two decades of Middle East crises...[T]he report of the National Petroleum Council can be viewed as defining the limits of the Voluntary Agreements under which the future Foreign Petroleum Supply Committees were to operate..."[44]

By the time of the Korean conflict in 1950, the thrust of public policy regarding oil had come full circle. Unlike Roosevelt's wartime plans to bring foreign oil reserves under the direct control of the U.S. government, the policy in 1950 clearly circumscribed the role of government.

In April of 1951, workers struck the Abadan oil refinery.[45] The Abadan refinery had the capacity to produce between 10 percent and 20 percent of all the aviation fuel produced in the world and was the largest single supplier of

"avgas" outside the U.S. It was the only refinery of any size in the entire Eastern hemisphere (excluding Soviet bloc countries). Aviation fuel produced there fueled practically all the planes landing in the Middle East and the Orient. The Abadan refinery was also the greatest single supplier of residual fuel for ship operators.

The strike shut down the facility for several weeks. Chaos resulted. European consumers were genuinely frightened and the oil companies doing business abroad were deeply concerned.

In response to the strike, the Department of Interior's Petroleum Administration for Defense (PAD) proposed that an industry organization be set up under the voluntary agreement authority of the newly approved Defense Production Act of 1950. The purpose of the Foreign Petroleum Supply Committee (FPSC) was to "spread" available oil supplies throughout the "free world" by means of commercial transactions -- buying, selling, and transporting among participating oil companies.

Having initiated the voluntary agreement process at the first sign of a serious threat, Interior was better prepared to respond to the long-term shut down of the Abadan refinery following Iranian Prime Minister Mussadegh's nationalization of the Anglo-Iranian Oil Company in May-June of 1951. This stoppage of petroleum flow threatened to undermine military operations in Korea and to jeopardize the entire mobilization program of the U.S.[46]

By June 25, 1951, the Voluntary Agreement Relating to the Supply of Petroleum to Friendly Foreign Nations was approved by the Attorney General, and the Foreign Petroleum Supply Committee (FPSC) was established to investigate problems

and make recommendations to the PAD for action. The FPSC was composed of participating company representatives and appointed by the PAD. The Attorney General initially objected to an industry chairman but was persuaded to approve the agreement anyway, given the emergency situation. The agreement provided for the establishment of an executive committee and 5 subcommittees made up of members of the FPSC.[47]

By accumulating and analyzing information provided by the corporate members of the FPSC, the PAD could discern imbalances of supply and demand. The most pressing of these imbalances concerned Europe. In order to supply refineries in Europe it was necessary to divert Middle East oil destined for American refineries and convince U.S. state regulatory bodies to allow for increased production and refining of domestic crude. It was also necessary to increase the exports of refined products out of the U.S.

Under the voluntary agreement arrangement, the PAD requested a "plan of action" from the FPSC describing the manner in which the problems submitted to it could be resolved. The plan of action "directed the participants, in general terms, to increase crude production and refining in areas other than Iran, to exchange supplies and to pool transportation facilities."[48] The "Plan" required the approval of the Secretary of the Interior, the PAD, and the Attorney General. On August 2, 1951, the first Plan of Action was approved.

The U.S. Attorney General withdrew his approval of the plan of action in September of 1952, following Interior's determination that the emergency situation had sufficiently improved. The FPSC continued performing fact-gathering activities for several months but was finally cancelled altogether on January 16, 1953.[49]

Pressures from industry, the Department of Defense (DoD), and the PAD in March and April of 1953 resulted in the approval of a new voluntary agreement and the reactivation of the FPSC to collect statistical information crucial to military planning and current operations. Both DoD and PAD had argued the indispensibility of this function to the Attorney General. Prior to approval, however, the Department of Justice insisted that the new agreement include a number of safeguards. These were:

- "The committee could consider problems and make recommendations only after a finding by the Secretary of the Interior that an emergency existed
- "The Committee or any of its subcommittes could meet only upon the call of the Secretary of the Interior or his designee
- "Only those matters listed on the Government approved agenda could then be considered
- "Attendance of a Government official was required at all committee or subcommittee meetings
- "No plan of action could be effective without the Attorney General's approval."[50]

With these provisions, the Agreement became effective July 20, 1953. It contemplated two types of activity:

- The collection and analyses of statistics relating to foreign petroleum operations on a continuing basis
- The preparation and submission of plans of joint action for the solution of problems affecting defense mobilization interests.[51]

The FPSC and its four subcommittees -- Supply and Distribution; Statistical; Production; and Refining -- met approximately once a week between April 1954 and January 1955, to supply data needed primarily by the DoD in connection with its strategic planning.[52]

A new Voluntary Agreement Relating to Foreign Petroleum Supply was approved in May 1956, following 1955 amendments to the Defense Production Act.

According to historian Klebanoff:

> Emergency situations such as WWII, the Korean War, and the Iranian oil crises helped to clarify the scope of U.S. priorities in regard to Middle East goals. No crisis in the past, however, so much brought together all the public and private groups concerned with oil as the Suez Canal crisis of 1956-57.[53]

On July 26, 1956, Egypt promulgated Law Number 285 for the nationalization of all assets in Egypt of the Universal Maritime Canal Company. In the view of Western leaders, this challenged the Western political-economic structure of the past several hundred years. Klebanoff writes:

> The act of nationalization by an...unfriendly Arab leader seemed not only to imperil a short-cut trade route to the Persion Gulf and the Far East but also to threaten the entire base of the international economic system.[54]

In response to the nationalization of the Canal, the Director of the Office of Defense Mobilization and the Secretary of the Interior proposed the organization of an ad hoc Middle East Emergency Committee (MEEC) under the Voluntary Agreement Relating to Foreign Petroleum Supply. While the 1955 amendments

to the Defense Production Act had stipulated that new voluntary agreements could not be entered into unless they were made by defense contractors with respect to military production, these amendments also permitted continuation of existing agreements. Accordingly, the FPSC -- which primarily involved coordination of petroleum shipments destined for "civilian" use -- was allowed to continue. The ad hoc MEEC was portrayed as the executive arm of the FPSC under the Voluntary Agreement Relating to Foreign Petroleum Supply. This course of action was recommended by the Department of Interior, concurred in by the Attorney General and the FTC, and approved by ODM.[55] The ad hoc MEEC came into being on August 10, 1956. Its legality was never seriously challenged by the Department of Justice or Congress.

The objectives of the new plan of action were:

- Cooperative action to remedy the transportation stoppage through the most efficient use of the storage and transportation facilities available to the participants regardless of ownership
- The purchase, loan, sale, or exchange for distribution into, or from foreign countries or areas of crude oil production, products, and blending agents by and among the participants
- Alteration in the rate of production of crude oil and the manufacture of refined petroleum products in foreign areas for the purpcse of alleviating the emergency created by the stopping of transportation.[56]

Specific actions to be taken by participants were enumerated in four "schedules." These schedules described reallocation objectives, specifying which geographic areas would divert to where and the diversion required to counterbalance previous diversions; the rerouting of tankers; the

movement of supplies between or within ports; and arrangements to change the operations of pipelines and other transportation facilities.[57]

The responsibilities of the MEEC were distributed among several subcommittees: Supply and Distribution; Tanker Transportation; Production; Refining; Pipeline Transportation; Statistical; and Information. The activities of the MEEC and its subcommittees under the plan of action were terminated as of July 31, 1957. During the period of actual emergency -- November 1956 to March 1957 -- an average of 3,007,000 barrels a day, or more than 90 percent of Europe's daily requirement, was made available to the affected areas.[58]

From 1957 to 1967 the activities of the FPSC were confined to informational functions -- the collection and analysis of statistics relating to foreign petroleum operations -- largely in support of defense agencies. On October 24, 1961, the voluntary agreement was again amended to authorize the establishment of a special security subcommittee to provide information on petroleum supplies and requirements for specific national security programs. The Petroleum Security Supply Committee was thus established and top secret clearances were obtained for all its members. The subcommittee conducted studies of petroleum supply and demand under simulated nuclear war conditions. It also conducted studies based on limited war scenarios and attempted to cultivate a better understanding of the military's dependency upon petroleum regarding specific military operations -- Southeast Asian operations, for example.[59]

In 1967, the FPSC was again convened in response to heightened tensions in the Middle East. In June, after receiving advice from other agencies, the Assistant Secretary of the Interior formally determined that an emergency existed. The

Committee established a plan of action and an ad hoc Emergency Petroleum Supply Committee (EPSC) to execute the plan of action. In October, the EPSC determined that oil supplies and refining capacity were adequate and the plan of action was put on standby status.[60]

From 1967 until the termination of the Voluntary Agreement Relating to Foreign Petroleum Supply in July 1976, the FPSC continued its informational function, especially through its Petroleum Security Committee.

Following the Arab Oil Embargo of 1973, Western nations formed a new International Energy Program, in which oil companies participated. A new voluntary agreement, to replace the FPSC, was established early in 1975. Following enactment of the Energy Policy and Conservation Act and the approval of the Defense Production Act Amendments of 1975 (see Section 3.5), it was decided to permit the Voluntary Agreement Relating to Foreign Petroleum Supply to lapse rather than to make it conform to the new requirements of the Defense Production Act. The Agreement was formally terminated July 1, 1976.[61]

4.4.3 Effectiveness of the Agreement

Since 1951, some form of petroleum supply voluntary agreement has existed with only one short interruption. Since 1976, this agreement has been administered under the auspices of EPCA, not the DPA. The agreements have been effective both in re-allocating world oil supplies during emergency situations and in providing critical data on the supply of and demand for world petroleum products for agencies concerned with U.S. national security. The emergency provisions of the voluntary agreements have been activated in three serious petroleum

crises. Under the 1951 plan of action, 33,000,000 barrels of oil were moved into Europe through a range of transportation and distribution arrangements. During the Suez Crisis of 1956, approximately 52,000,000 barrels of oil were transported and distributed, much of it to Europe. Had the need eventually arisen from the 1967 Arab-Israeli War, the FPSC had anticipated the crisis and would have responded. Because the modern industrial economy is largely dependent on the free flow of petroleum supplies, the benefits of an effective system of alternative allocation and transportation to the United States and the industrial world during an emergency is considerable.

To the corporations involved, the benefits were obvious. The petroleum industry is by nature highly unstable. It has, therefore, been marked historically by many forms of market control.[62] The international crises of 1951, 1956, and 1967 all seriously threatened the institutions of corporate control. Voluntary agreements were, in effect, government sanctions of industry maneuvers in response to such threats. Regarding the voluntary agreement of 1951, historian David Painter writes:

> Basically the arrangements provided a mechanism whereby the gap in world oil supplies left by the sudden withdrawal of Iranian oil from world markets could be filled without disrupting established patterns of marketing, pricing, and distribution. As Roy Prewitt of the FTC pointed out, they made it "possible for a group of American companies, in cooperation with Shell and Anglo-Iranian, to protect the markets formerly supplied by Anglo-Iranian, against encroachments by outsiders and independents."[63]

The agreements, then, appear to have been beneficial to both industry and government during times of crisis. Moreover, this benefit was accomplished without government intervention -- a situation favored by both parties. This modus

vivendi appears to have changed considerably in recent years. In 1976, the earlier Voluntary Agreement Relating to Foreign Petroleum Supply was terminated in lieu of a voluntary agreement under which companies participate in an international energy program involving enforcement powers that were not a part of earlier voluntary agreements. This indicates that while benefits still accrue to nations and industry from petroleum supply agreements, the nature of those agreements and their benefits have changed somewhat.

The negative side of the effectiveness ledger on voluntary agreements concerns the potential costs of industry collusion. Such costs are typically defined by the income distributional effects associated with collusive production and pricing policy. Due to the fundamental nature of petroleum commodities within the structure of the economy, such distributional effects can be profound.[64]

Throughout the history of voluntary agreements dealing with foreign petroleum, public opinion has been highly sensitive to the potential cost of granting antitrust immunity to American petroleum corporations. During the 1956-57 period of the MEEC activities, members of Congress received numerous complaints about the rising prices of petroleum products. Senators Estes Kefauver and Joseph Mahoney launched investigations to discover the causes of such pricing practices.[65] Concerning price hikes in affected areas of Western Europe during the Suez crisis, Klebanoff concludes that they seriously weakened European economies by siphoning off potential investment funds.[66] Currently, the so-called "Petroleum Litigation," now pending in the U.S. District Court in Los Angeles, alleges decades of systematic price fixing of petroleum products on the West Coast, the contrivance of the 1973-74 petroleum shortage, and the elimination of competition in the industry. These

collusive practices are alleged to have been facilitated by, or to have originated in, the voluntary agreement approved under Section 708 of the original Defense Production Act.[67]

True or not, these public perceptions must be counted among the problems of voluntary agreements relating to foreign petroleum, as they can undermine national unity in the face of national crises. Indeed, as discussed in Chapter 3, concern about abuses by this industry can lead -- did lead in 1975 -- to enactment of stringent new procedures applicable to the entire program.

4.5 M-14 INTEGRATION COMMITTEE

4.5.1 Introduction

The M-14 Integration Committee, unlike most other voluntary agreements, operated during peacetime. More accurately, it began during a period of rising cold war tensions. Several reasons were behind the formation of this committee:

- The desire to broaden the defense industrial base
- A concern for the costs of stretched out and unmet delivery schedules
- Problems associated with producing to strict military specifications
- The ever-present problem of appropriate responses to rising East/West tension.

The M-14 Integration Committee was established to help bring an additional contractor into the M-14 rifle production process. It was the final step in attempting to solve a long-standing procurement dilemma. The committee was considered

necessary to speed the new contractor's learning process. Although this was an interesting application of voluntary agreements its potential impact was undercut by the adoption, by the Army, of a new standard infantry rifle (the M-16) just two years after the Integration Committee was formed.

4.5.2 The M-14 Program

The M-14 Integration Committee was the final step in a long-term attempt to develop, produce, and deliver a modern rifle to U.S. and Allied troops. For a period of 15 years, from 1945 to 1960, the program for the development, production and distribution of the M-14 was marked by a continuing absence of urgency and emphasis as evidenced by the following observations:

- The requirement for a modern rifle to replace the M-1 was first identified in 1945
- For many years only one engineer was assigned to the program
- The Army initiated no procurement action from May 1957, when the M-14 was adopted as the standard, until 1958, and it was then ordered only in small quantities
- The Springfield Armory, one of three early producers of the M-14, was restricted by DoD and Army directives to a production rate far less than its capacity during 1959 and early 1960.[68]

Beginning in 1957 when the Soviet Union launched the first man-made satellite and continuing through the defense build-up in response to the 1961 Berlin Crisis, tensions between the U.S. and the U.S.S.R. mounted. The Kennedy Administration placed much greater emphasis than its predecessors on conventional military strength. General Maxwell Taylor argued, for example, that it was not enough to counter the

Soviets on the strategic front. Conflict was more likely to occur in the conventional spectrum for which strategic weapons were ineffective. Conventional force modernization was considered essential.

In this atmosphere, the delays and inefficiencies that characterized the M-14 rifle program -- a program to supply the basic instrument of conventional force -- received considerable attention. A Congressional investigation of the program was sparked in part by published reports in 1961 that the 1,500 U.S. troops assigned to augment European forces in the wake of the Berlin Crisis entered Berlin carrying the old M-1 rifle. Furthermore, the 5,000 troops already on duty in Berlin were also equipped with the older weapon. Rapid expansion of the M-14 program was perceived as an appropriate step in meeting the Soviet threat inasmuch as the Soviet Army had been modernized at least once since WWII.[69]

The M-14 rifles were slow in coming. The performance of the first two commercial producers of the M-14 -- Harrington-Richardson (H-R) and Olin-Winchester -- was poor. Harrington-Richardson received its first contract for 35,000 M-14s in April 1959. Deliveries were scheduled to commence in June of 1960. On October 17, 1960, before delivery on the first contract had commenced, H-R received another contract for 70,000 rifles with deliveries scheduled between December 1960 and July of 1961. Before the second contract was placed, the Army had requested H-R to increase its production line capacity from 5,000 to 10,000 M-14 rifles per month. Of the approximately 5,000 rifles scheduled for delivery by H-R in June of 1960, only 600 had actually been delivered. In July of 1961, Secretary of Defense Robert S. McNamara testified that H-R's production record had been "miserable" but that the

company had recently achieved rates of 15,000 rifles per month against a schedule of 10,000.

Olin Corp., too, was singled out by McNamara for "a very poor record of performance." Olin, the second early commercial contractor, received its first M-14 order in early 1959 and was scheduled to commence deliveries in April of 1960, building to 5,000 rifles per month and concluding the contract in March, 1961.

Both of these firms experienced severe production problems arising from:

- The reconfiguration of production layout and capabilities to meet the military's demand for higher rates of production
- The steel strike of 1959
- The inadequacy of quality control standards
- The attempt to mass produce items conforming to strict military specifications
- Design problems that resulted in production slow-downs
- Problems with suppliers and subcontractors.

In July 1961, Secretary McNamara assigned Brig. General C. J. Gibson as the project manager for the M-14. Gen. Gibson's primary responsibility was to stimulate production of the rifle.

4.5.3 Formation of the Committee

On August 22, 1961, Gen. Gibson formed an integration committee

> to increase mass production of a precision item... In Army Ordnance view it is therefore imperative that present mass production manufacturing difficulties be resolved as soon as possible by all producers so that sufficient weapons and repair parts may rapidly be in the hands of the troops.[70]

The Army felt that it could achieve its objective as rapidly as possible by expanding the production base. Consequently, it established a third commercial producer, Thompson Ramo Woolridge, Inc. (TRW). TRW had no previous riflemaking experience but was experienced in mass production of precision products. TRW's Electromechanical Group was the industry's largest supplier of jet engine components. The Group was strong on low cost, high precision production work. In 1957, their aircraft business peaked and started to decline and TRW found several alternative uses for its capabilities in the Army Ordnance field.[71]

Representatives of TRW, H-R, Olin-Winchester, selected subcontractors, Springfield Armory, and the Ordnance Corps made up the Integration Committee. According to the Ordnance Corps, the Committee would provide "a tested method for continuing discussion and analysis of current and future production problems..."[72]

The committee was structured as follows:

- The chairman was the Commanding General, Ordnance Weapons Command, Rock Island, Illinois
- The deputy chairman was Chief of the Industrial Division, Ordnance Weapons Command
- The assistant to the chairman was the Commanding Officer, Springfield Armory

- The secretary was Assistant to the Chief of the Industrial Division, Ordnance Weapons Command.
- Contractor membership included:
  - -- Prime contractors actually under contract
  - -- Selected subcontractors to the prime considered by the chairman to be necessary to the committee's function
  - -- Each contractor under contract for the establishment or maintenance of standby or layaway facilities for production of the M-14 rifle.

The name and address of eligible, new contractors was submitted to the Director of the Office of Civil and Defense Mobilization (OCDM). When the eligibility of a contractor ceased, the committee chairman notified the OCDM for appropriate action.

Each contractor member could be represented on the Committee by one policy level official and one senior production official. In addition, individuals uniquely qualified in the weapons field could be appointed as consultants with the approval of the chairman. Ordnance officers or civilians familiar with military procedure or M-14 rifle production or engineering were also appointed by the chairman to assist the Committee.

The M-14 Integration Committee had five objectives:

- To make available to all prime contractors the benefit of the production experience and technique of each contractor member without royalty or charge so as to integrate the facilities of the group in order to obtain maximum production in the shortest possible time

- To control, divert, and direct critical components to prime contractors who have the greatest demand for them
- To introduce and effect changes in material and design with a view to standardization of material, drawings, specifications so as to maintain interchangeability of parts
- To provide for the interchange of materials, skills, tools, training aids, machines, and other necessities of production
- To establish production schedules to meet Ordnance Corps requirements.

TRW received its first contract for M-14s on October 2, 1961. The contract was for 100,000 rifles to be delivered in November of 1962. A second contract was placed in October 1962 for an additional 219,691 rifles, making TRW the largest supplier of M-14s. In 1962-1963 the Army envisioned the production of 300,000 M-14s annually through 1966. However, in late 1963 the Secretary of Defense terminated the program and no more of the rifles were purchased.[73] The totals of M-14 orders are presented in Table 4.5-1.

4.5.4 Effectiveness of the Committee

The M-14 Integration Committee shows the potential effectiveness of voluntary agreements in helping to expand the production base. The accumulated experience of the Springfield Armory and the two early commercial producers were made available through the Committee to a producer inexperienced in riflemaking. The new producer, TRW, avoided the production problems experienced earlier by H-R and Olin-Winchester. Of course, the potential contribution of the Committee was minimized by the termination of the M-14 program, much earlier than anticipated by the Army.

TABLE 4.5-1
ORDERS FOR THE M-14 RIFLE

FY	Springfield	H&R	Winchester	TRW	Total
1958	15,600	---	---	---	15,600
1959	---	35,000	35,000	---	70,000
1960	32,000	70,082	81,500	---	183,582
1961	70,500	133,000	---	---	203,500
1962	49,000	224,500	90,000	100,000	463,500
1963	---	75,000	150,001	219,691	444,692
Total	167,100	537,582	356,501	319,691	1,380,874

The principal impact of the Committee was the rapid expansion of the production base, which allowed the timely and rapid production of M-14 rifles by TRW. The integration committee does not appear to have helped solve the technical difficulties experienced by the two early commercial producers. By the time General Gibson was placed in charge of the M-14, well before the formation of the integration committee, the production and delivery problems experienced by H-R and Olin-Winchester had been resolved and both were producing on schedule or better.[74] Had the Integration Committee been convened earlier, the production difficulties might have been resolved more rapidly.

The expansion of the defense industrial base brought about by the Integration Committee might have been accomplished by other means -- educational orders, for example -- without antitrust potential. It is doubtful, however, that alternate methods could have achieved expansion as rapidly. This rapidity appears to have been the Integration Committee's chief benefit.

4.6 VOLUNTARY TANKER AGREEMENT

4.6.1 Purpose of the Agreement

The voluntary agreement program entitled "Contribution of Tanker Capacity for National Defense Requirements" (hereinafter referred to as the "Voluntary Tanker Agreement") concerns the use of privately-owned tankers to support Department of Defense requirements during a national security emergency. In the event of activation, this program would provide a mechanism for allocating DoD fuel transportation requirements among participating tanker operators (hereinafter referred to as Participants) in proportion to the tanker tonnage controlled by each operator. This program is now maintained on a standby basis to avoid potential antitrust problems. It is interesting to note that the agreements between the Maritime Administration and the Participants in this program fit the strict definition of "standby agreement" we presented in our companion report on standby agreements, TR-5142-4. These agreements are contractual commitments by tanker operators to provide tanker services at the sole option of the government to help satisfy substantially expanded military needs.[75]

The Maritime Administration's description of the program states that:

> The agreement is designed to create close working relationships among the [Maritime] Administrator, the DoD, and Participants through which military needs and the needs of the civil economy, as they exist at the time the Agreement is activated, can be met by cooperative action. The Agreement provides for responsive support of defense needs with minimum disruption of industrial operations and affords Participants maximum flexibility to adjust their commercial operations to meet current and projected defense requirements.[76]

Basically, this means that Participants can cooperate to meet emergency national security needs without being liable for violating antitrust statutes. Competing operators can determine among themselves whose tankers will be used for which purposes, both defense and commercial.

Under the Voluntary Tanker Agreement, each participating tanker operator is committed to provide clean and dirty tanker capacity at the request of the Maritime Administrator "at such times and in such amounts as the Administrator shall determine to be necessary to meet the essential needs of the DoD for the transportation of petroleum and petroleum products in bulk by sea." Each operator is similarly committed to make such capacity available to other Participants when requested to meet non-DoD obligations.

4.6.2 Creation and Functioning of the Program

The Voluntary Tanker Agreement program has gone through several stages since it was first proposed by the Acting Secretary of Commerce, shortly after enactment of the Defense Production Act of 1950. The original program was approved by the Attorney General on January 23, 1951. From 1951 to 1953, this program was employed to help meet the fuel transportation needs generated by the Korean War. While the program remained on active status after 1953, the Military Sea Transportation Service was able to obtain all needed tanker services through normal procurement activities. Thus, the Participants continued to meet and exchange information but did not recommend allocations of tanker capacity for defense or commercial uses.

In his report on voluntary agreements, dated November 9, 1955, the Attorney General noted unresolved "questions as

to the present defense contribution made by [the Tanker Agreement] Committee, now in virtually a standby status."[77] Given the antitrust problems associated with continued Committee meetings, particularly since 99 percent of the industry was participating, the Attorney General delayed renewed approval of this program. In a second report concerning voluntary agreements, submitted three months later, the Attorney General expressed his concerns about the antitrust problems more strongly and went on to say, "I am desirous of eliminating any possibility of antitrust abuse by the members of the Committee meeting together during the present period of inactivity."[78] He went on to recommend that the program plan be revised to allow meetings of the Tanker Requirements Committee only if the Maritime Administrator, with the concurrence of the Director of the Office of Defense Mobilization, were to find that an emergency existed in the tanker field. The plan was amended to this effect, and on March 20, 1958, the plan was formally placed on standby status.

The program has not been activated since. In the early 1980s, the program plan was revised to conform with changes in the law, but its purpose and nature remain essentially the same. As in the 1950s, participation in the standby Tanker Voluntary Agreement includes virtually every eligible tanker operator.

Activation Procedures - The plan can be activated at the request of the Secretary of Defense, when the Maritime Administrator, with the concurrence of the FEMA Director, finds "that a tanker capacity emergency affecting the national defense exists and that the defense requirement can be met more efficiently by activation of this Agreement than by requisition of ships" under Section 902 of the Merchant Marine

Act. Upon such a finding, the Administrator is required to notify the Attorney General and the Chairman of the Federal Trade Commission.

Meetings of the activated Tanker Requirements Committee are called by the Administrator and chaired by a full-time employee of the Maritime Administration. The Committee advises the Administrator regarding the allocation of tankers for DoD and commercial use. In accordance with the standing agreements betwen the Participants and the Maritime Administration, these tankers are then made available for the specified uses at the request of the Administrator. However, actual procurement of tanker services is handled by the Department of Defense or through a charter agreement between Participants. (The allocations for commercial uses are designed to mitigate disruptions in the civilian market caused by diversion of tankers to meet increased DoD needs.) The Secretary of Transportation is responsible for providing to the Secretary of Defense war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seamen's War Risk Insurance for any vessel chartered under the activated program. Finally, each Federal agency is responsible for keeping other involved agencies informed of activities under the activated agreement.

Responsibilities for activating the Voluntary Tanker Agreement are depicted in Figure 4.6-1.

4.6.3 Effectiveness of the Voluntary Tanker Program

Historical records indicate that the Voluntary Tanker Agreement was very effective from 1951 to 1953, when it was used to allocate tanker capacity in support of Korean War requirements. When it was no longer needed to meet these

requirements, antitrust concerns began to outweigh the potential benefits of an active program involving an ongoing exchange of information among competing operators. So, the program was eventually relegated to standby status and has remained in that condition ever since. Because the program is now in standby status, an analysis of its effectiveness with respect to improved industrial responsiveness is basically an analysis of a standby, rather than a voluntary, agreement.

However, before discussing the effectiveness of the current standby program, it is worth noting what was said about the program when it was active. In his report on voluntary agreements dated February 9, 1956, the Attorney General wrote:

> It is obvious that the voluntary tanker plan has been of great value to the United States for the period from January 1951 to March 1953 in meeting national-defense requirements.[79]

In his report submitted three months earlier, the Attorney General had also observed that:

> ...this Government, in addition to having all of its tanker transportation needs met fully and promptly through this plan, benefited very substantially from a financial standpoint.[80]

Judging by these statements, we conclude that the Voluntary Tanker Agreement was an effective program and could be again, in the event of a future emergency need.

While the requisition authority mentioned earlier could have been used by the Government to obtain tanker capacity needed for military fuel transportation in the early 1950s and while this authority could also be used in the

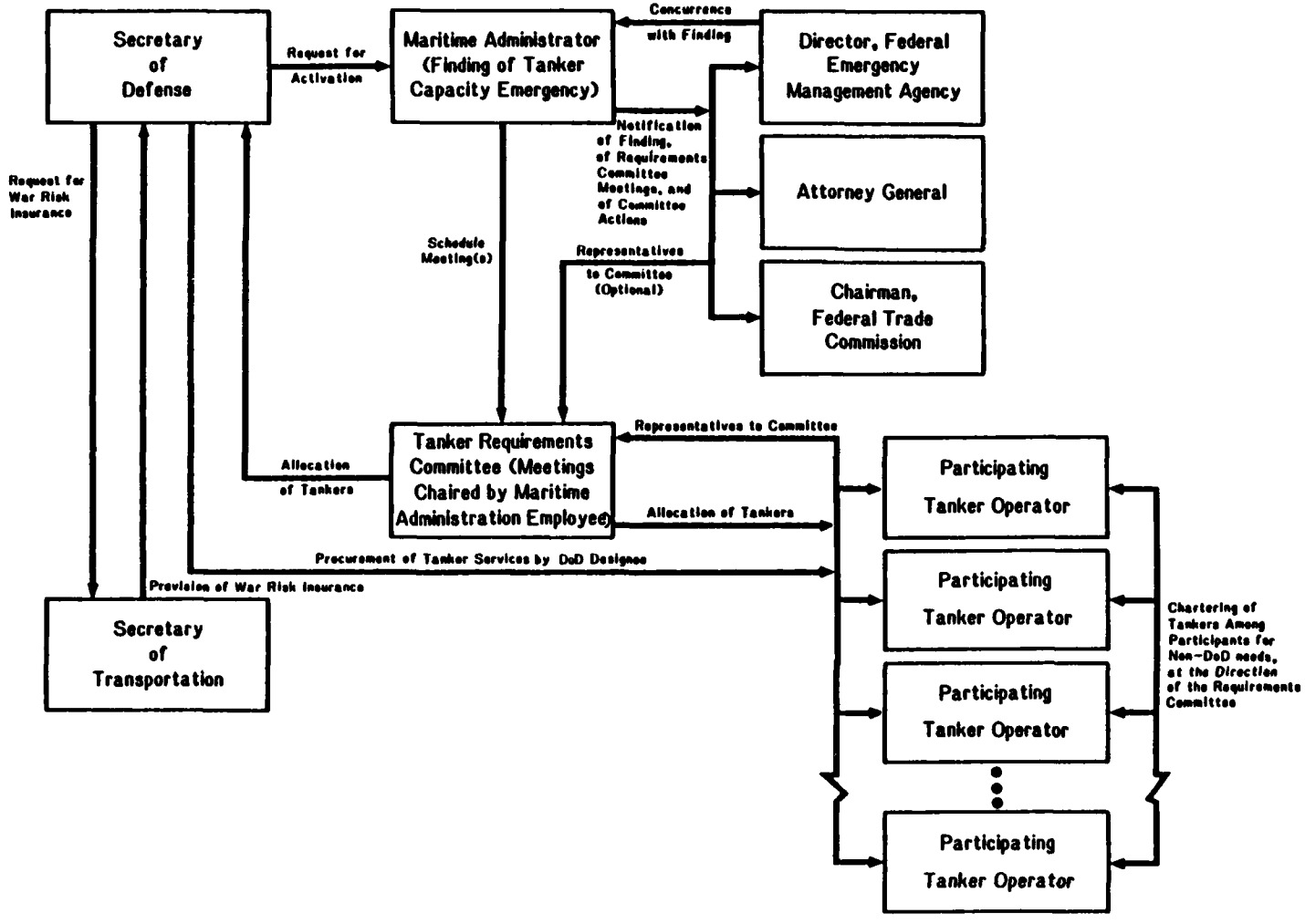


Figure 4.6-1 Activating and Carrying Out the Voluntary Tanker Agreement

future, this approach would probably be far less effective and efficient in meeting defense and commercial requirements during an emergency. As was the case with the credit agreement, voluntary actions by private tanker operators reduce the administrative burdens on the Government and function within the existing management framework of the Participants.

The current program is a voluntary agreement to the extent that procedures for setting up the agreement have been satisfied. These procedures, which involve the Maritime Administration, the Department of Defense, the Department of Justice, the Federal Trade Commission, and the Federal Emergency Management Agency, would require some time to complete, in the event of an emergency, if the standby program did not exist. Thus, we conclude that the standby program saves the administrative time and resources that would otherwise be needed to create a voluntary tanker agreement during an emergency.

4.6.4 Conclusions

The Voluntary Tanker Agreement was proven to be an effective means of supporting military requirements during the Korean War and would likely improve the commercial industry's ability to meet future emergency military needs for transportation of fuels. By maintaining a standby program, the Maritime Administration ensures a more rapid implementation of the voluntary agreement mechanism and earlier realization of its benefits during a national security emergency. Because of the nature of this industry, i.e., service versus manufacturing, it is doubtful that ongoing cooperative planning during peacetime would enhance the use of this program during an emergency, at least to an extent which would justify the attendant antitrust problems. In other words, the tanker

industry harbors the ability to respond with more flexibility and rapidity to emergency needs than do most manufacturing industries.

4.7 VOLUNTARY AGREEMENT OF THE MUNITIONS INDUSTRY

4.7.1 Purpose of the Agreement

The Voluntary Agreement of the Munitions Industry (hereinafter referred to as the Munitions Agreement) is a proposed plan to establish standby procedures for voluntary discussion and planning among private firms and Government arsenals for producing ammunition, propellants, and explosives in response to emergency defense needs. Like the Voluntary Tanker Agreement, the Munitions Agreement would be maintained on a standby basis and could be activated when the Assistant Secretary of the Army for Research, Development and Acquisition found that a national defense emergency existed, that defense requirements could not be met in the absence of cooperation among munitions producers, and that these requirements could be met more efficiently by activating the Agreement. Unlike the agreements with tanker operators, the agreements with munitions producers would not be standby agreements in the strict definition of the term. Under these agreements, Participants would agree to meet at the request of the Army Assistant Secretary, but they would not commit to produce munitions at the sole option of the Government.

If the Agreement were activated, meetings of industry representatives could be used to address the following topics:

- Technical information and data regarding production techniques and processes, patents or patent rights, facilities,

materials, components, equipment or personnel to be used in the production of munitions

- Problems of production or supply of materials, components, equipment, or facilities arising from the production and distribution of munitions
- Optimum integration of parts, materials, jigs, dies, equipment, facilities, and other physical assets of one or more members with the view to effecting maximum production
- The allocation of production quotas to participants to meet surge requirements
- Deviations from applicable specification and/or technical requirements, and changes in such documents to ease manufacture, improve material, or promote standardization of material and design
- The exchange of technical information, production techniques, and patent rights, relating to munitions and the exchange of materials, equipment, and personnel to be used in the production of munitions between Participants
- The maintenance by the Army of such technical production performance and control records, materials inventory, and other records as are required in support of national defense
- Any other topic which the Army Assistant Secretary determines to be of sufficient importance to national defense as to warrant discussion with the Participants.[81]

4.7.2 Creation and Functioning of the Munitions Agreement

The proposed Munitions Agreement is descended from the family of Army integration committees created during the Korean War. Several of these committees continued in active

status through the 1960s and 1970s, but met rarely, if at all, during these years. Only one committee, the Small Arms Ammunition Committee, met regularly during these years. In more recent years, this committee was placed on standby status and was eliminated altogether in 1984.

4.7.3 Effectiveness of a Voluntary Munitions Agreement

Like other voluntary agreements, the Small Arms Ammunition Integration Committee was created to facilitate the substantial increases in ammunition production required by the Korean War through the exchange of information among different producers and the standardization of products and production processes. The task of standardization was so great that this committee and its numerous subcommittees remained very active during the 20-year period following the end of that war. The Army's 1960 report on active ordnance integration committees offers a sampling of the various activities and accomplishments of the Small Arms Committee. These included:

- Establishing a small arms ammunition parts numbering system, which improved the efficiency and flexibility of inventories maintained by these producers
- Establishing a system of inventory and control of spare parts, which permitted maintenance of smaller spare parts inventories
- Standardizing spare parts design, which permitted maximum use of existing equipment while still maintaining standard parts
- Creating pictorial index catalogs, which reduced the need for mechanical engineers and reduced handling costs of maintenance parts significantly

- Approving a small arms percussion-type primer
- Standardizing cups and cases
- Standardizing perishable tooling, which reduced manufacturing costs and tool usage, improved product quality, and increased interchangeability of tools among plants in the event of an emergency.[82]

Examples of the magnitude of the standardization effort by the Committee and its various subcommittees can be found in minutes of the numerous meetings. For example, the Production Tooling and Equipment Engineering Subcommittee reported at the 23rd meeting of the full committee in October 1962 that 195 new part and assembly drawings had been prepared, checked, and approved for usage at the Subcommittee's meetings several months earlier and that 1,615 drawings had been standardized by that subcommittee since its beginning.

It is clear from such numbers, and from the mere fact that the Small Arms Ammunition Integration Committee and its various subcommittees held scores of meetings, that the meetings served a useful purpose. But, it is less clear that standardization and other accomplishments would not have occurred in the absence of this committee. The Committee's existence undoubtedly speeded the process of improving ammunition production capabilities and probably led to more rapid ammunition production during the Korean War.

The proposed Munitions Committee could serve the same purposes in the event of a future emergency. By creating such a committee on a standby basis, the Government can save the administrative lead time which could delay cooperative efforts by industry members at such a time. In the absence of an

emergency, the limited potential advantages of an active integration committee would probably not justify the attendant antitrust problems. Moreover, absent the near-term requirements generated by a national security emergency, the processes of developing and standardizing new products and production processes can be achieved more gradually through a variety of means. (These means are described in Chapter 5.)

ENDNOTES

1. U.S. Army, "Ordnance Procurement Instructions: Section 22 -- Ordnance Integration Committees," January 13, 1951, p. 5.

2. U.S. Senate, Committee on Banking and Currency, "Report on Review of Voluntary Agreement Program under Defense Production Act," submitted by Attorney General, Government Printing Office, Washington, February 28, 1956, p. 9.

3. As Table 3.3-1 indicates, many agreements were withdrawn or disapproved between 1953 and 1955.

4. "Program for Voluntary Credit Restraint," Federal Reserve Bulletin, March 1951, pp. 263-264.

5. Ibid., p. 264

6. Statement of Federal Reserve Board Chairman Thomas B. McCabe in "Announcement of Formation of National Committee, March 14, 1951," Federal Reserve Bulletin, April 1951, p. 378.

7. "Voluntary Action to Help Curb Inflation," Federal Reserve Bulletin, November 1951, p. 1349.

8. Ibid., p. 1347.

9. "The Road Ahead," Federal Reserve Bulletin, March 1952, p. 251.

10. Testimony of Oliver S. Powell, Member of the Board of Governors, Federal Reserve System, and Chairman, National Committee, Voluntary Credit Restraint Program, at hearings before the Subcommittee on General Credit Control and Debt Management of the Joint Committee on the Economic Report, U.S. Congress, March 19, 1952, pp. 469-470.

11. Ibid., pp. 471-472

12. November 1951 Bulletin, op. cit., p. 1348. See also Federal Reserve System submission to U.S. Congress, "First Annual Report of the Joint Committee on Defense

Production," Government Printing Office, Washington, 1951, p. 246. This report describes legislative authority for Federal Reserve programs. Two credit restraint programs were authorized by Title VI of the Defense Production Act, but the report states that: "(t)he specific authority for the voluntary credit restraint program is contained in section 708 of the Defense Production Act of 1950 and Executive Order No. 10161." See Section 6.4.2 for a discussion of the feasibility of establishing voluntary agreements for credit control and similar purposes under the present version of Section 708.

13. "First Annual Report," op. cit., pp. 247-248.

14. Ibid. and statement of W. Randolph Burgess, Chairman, Executive Committee, the National City Bank of New York, contained in Director, Aaron, ed., Defense, Controls and Inflation, University of Chicago Press, Chicago, 1952, p. 61.

15. "First Annual Report, op. cit., p. 248.

16. Ibid.

17. Ibid.

18. April 1951 Bulletin, op. cit., p. 378.

19. March 1952 Bulletin, op. cit., p. 251.

20. Director, op. cit., p. 62.

21. March 1951 Bulletin, op. cit., p. 263.

22. Ibid., p. 264.

23. Ibid.

24. "First Annual Report," op. cit., p. 248.

25. November 1951 Bulletin, op. cit., p. 1350.

26. April 1951 Bulletin, op. cit., p. 379. Later bulletins dealt with restriction of business capital expenditure financing, state and local government financing, loans on real estate, international financing, and loans secured by stocks. Over the course of the program, several of the bulletins were reissued in modified form.

27. November 1951 Bulletin, op. cit., p. 1350.

28. Joint Committee hearings, op. cit.., p. 466.

29. E.g., see questions by Representative Bolling, pp. 470-471, and Representative Patman, pp. 472-473 in ibid.

30. U.S. Congress, "Defense Production Act Amendments of 1952," conference report to accompany S.2594 (Report No. 2352, 82nd Congress), p. 24.

31. "Suspension of Program for Voluntary Credit Restraint," Federal Reserve Bulletin, May 1952, pp. 501-502. See also U.S. Congress, "Second Annual Report of the Joint Committee on Defense Production (Washington, Government Printing Office, 1952), p. 259.

32. "Status of the Voluntary Credit Restraint Program, September 11, 1951," Federal Reserve Bulletin, September 1951, p. 1058.

33. Ibid., p. 1059.

34. Ibid.

35. Ibid.

36. November 1951 Bulletin, op. cit., p. 1354.

37. Joint Committee hearings, op. cit., p. 465.

38. November 1951 Bulletin, op. cit., p. 1347 and p. 1355.

39. These same three companies had built B-17s during World War II. Boeing had been the initial designer of that aircraft, as well.

40. Authorities under Section 708 of the Defense Production Act were delegated to the Defense Production Administrator by Executive Order 10200, dated January 3, 1951. However, these authorities were conferred, on an interim basis, on the Director of the Office of Defense Mobilization during the incumbency of an Acting Defense Production Administrator. The 708 authorities were assumed on July 23, 1951, by the new Administrator. (FEMA files: letter from Manly Fleischmann, Defense Production Administrator, dated August 1951.) Defense Production Act authorities were subsequently transferred to the ODM by Executive Order 10433, dated February 4, 1953.

41. Committee on Banking and Currency, February 28, 1956, op. cit., p. 25.

42. For an elaboration of the influence of "strategic industries" on national security see G. Sen, The Military Origins of Industrialization and International Trade Rivalry, New York, 1984.

43. Painter, David S., Politics of Oil: Multinational Oil Corporations and U.S Foreign Policy, 1941-1954, Ph.D., University of North Carolina, 1982, pp. 96-150.

44. Klebanoff, Shoshans, Middle East Oil and U.S. Foreign Policy, New York, 1974, pp. 63-64.

45. The Department of the Interior's response to the strike and the subsequent establishment of the Foreign Petroleum Supply Committee are described in Oilmen in Washington, Bruce Brown, 1965, U.S. Library of Congress.

46. Klebanoff, op. cit., p. 88.

47. Brown, op. cit., pp. 157-158; and Klebanoff, op. cit., p. 89.

48. U.S. Senate, Committee on Banking and Currency, "Review of Voluntary Agreements Program under the Defense Production Act" (Report dated February 9, 1957, by the Attorney General), Government Printing Office, Washington, February 13, 1957, p. 18.

49. Engler, Robert, The Politics of Oil, Chicago, Ill., 1976, p. 303; and Committee on Banking and Currency, February 13, 1957, op. cit., p. 18.

50. Committee on Banking and Currency, February 9, 1957, op. cit., p. 21.

51. Engles, op. cit.

52. Letter, dated February 15, 1955, from the Secretary of Interior, Douglas McKay, to the ODM Director, Arthur Flemming (FEMA files).

53. Klebanoff, op. cit., pp. 117-118.

54. Ibid., pp. 120-121.

55. Ibid., pp. 136-138.

56. "Review of Voluntary Agreement Programs, February 28, 1956," op. cit., p. 29.

57. Letter to Arthur Flemming, Director, ODM, from Clarence Davis, Acting Secretary of the Interior, August 10, 1956 (FEMA files).

58. Klebanoff, op. cit., p. 141.

59. "The Voluntary Agreement: A Review and Evaluation," Ben Tafoya, Office of Oil and Gas, Department of the Interior, January 25, 1972, pp. 3-4 (FEMA files).

60. Ibid., pp. 7-8.

61. U.S. Congress, "Annual Report of the Joint Committee on Defense Production, 1976," Government Printing Office, Washington, D.C., 1977, Volume I, pp. 23-24.

62. Green, F., and Nore, Petter (eds.), Issues in Political Economy, London, 1979, esp. Chapter 4, "Oil and Contemporary Capitalism," pp. 89-121.

63. Painter, op. cit., pp. 490-493.

64. See for example "The Changing Distribution of Industrial Profits: The Oil and Gas Industry within the Fortune 500, 1979-80," Report of the House Committee on Energy and Commerce, U.S. Congress, December 11, 1981, (Report No. 97-390), Washington, D.C.

65. Klebanoff, op. cit., p. 142.

66. Ibid., p. 145.

67. Baeder, Thomas, in testimony before the Senate Committee on the Judiciary, October 3, 1979.

68. "Report on the M-14 Rifle Program," Preparedness Investigating Subcommittee, U.S. Senate, Washington, D.C., 1961.

69. Ibid., p. 4.

70. "Plan and Regulation of the Ordnance Corps for the Formation, Organization, and Functioning of the Integration Committee on the M-14 Rifle, 7.62 mm.," August 22, 1961 (FEMA files).

71. "Making the M-14 Rifle," American Rifleman, February, 1963.

72. "Plan and Regulation," op. cit., p. 2.

73. "The Army's Rifle Procurement and Distribution Program," Senate Committee on Armed Services, U.S. Congress, 1967, Washington, D.C.

74. "Report on the M-14," op. cit.

75. It should be noted that the contractual commitment to provide tanker capacity was between the Maritime Administration and tanker operators, while DoD was responsible for contracting for the actual tanker services.

76. Maritime Administration, Revised Standby Voluntary Agreement: "Contribution of Tanker Capacity for National Security Requirements," Department of Transportation, Washington, D.C., September 29, 1982.

77. Committee on Banking and Currency, February 28, 1956, op. cit., p. 11.

78. Ibid., p. 47.

79. Ibid., p. 46.

80. Ibid., p. 11.

81. Department of the Army, "Voluntary Agreement of the Munitions Industry," proposed plan, January 1984.

82. Office of the Chief of Ordnance, "Report on Active Ordnance Integration Committees," Department of the Army, Washington, D.C., undated (FEMA files).

5. RELATED METHODS

This chapter describes three methods or procedures that are, in some ways, analogous to DPA voluntary agreements: small business manufacturing pools, research and development joint ventures, and defense contracting methods, such as leader-follower, that accomplish some or all of the purposes of past voluntary agreements. Some of these methods might be used in lieu of voluntary agreements where they are a better alternative.

5.1 SMALL BUSINESS MANUFACTURING POOLS

Ever since the World War II mobilization, critics have contended that mobilization programs have promoted increased centralization of economic power and worked to the detriment of small business firms. This analysis has charged that materials controls have largely curtailed existing civilian production by small business firms, but that defense contract awards have largely been concentrated with large business.

A variety of programs and techniques have been tried to promote the interests of small business firms during mobilizations. During both World War II and the Korean conflict, special government agencies were established to facilitate small business awards. (The present-day Small Business Administration is the direct successor to the Korean War agency, the Small Defense Plants Administration.)

One method that attempted to aid small business in obtaining defense contracts was the small business manufacturing pool. This technique allowed small business firms to pool their financial and technical resources to bid jointly on defense programs that, individually, none would be capable of performing. This technique was widely used during World War II and, during the Korean conflict mobilization, was authorized by Section 708 of the Defense Production Act. Initially, assistance to small firms in developing such pools was provided by the Office of Small Business of the National Production Authority, but, with passage of 1951 DPA amendments, this authority was given to the newly-created Small Defense Plants Administration. The SDPA provided assistance to pools by:

- Providing advice about organizing pools
- Arranging for organizing meetings with groups wishing to form a pool
- Helping groups prepare their applications under the DPA
- Serving as liaison between applicants and other government agencies
- Notifying procurement agencies of the approval of new pools.[1]

SDPA's role was not confined to aiding in the development of new pools. As the principal advocate for increased small business contracting opportunities, SDPA also helped them obtain defense contracts, prepared engineering surveys to document their capabilities, and helped them solve financial problems.[2]

Despite this, the program was widely considered ineffective. In a 1956 report on voluntary agreements, the Attorney General noted that "small-business production pools have had very little success in obtaining contracts."[3]

To that time, 29 small business pools had been approved, all but four of which had been dissolved.[4] Even the four groups active at that time were so insignificant that the Attorney General considered it unnecessary to discuss their activities substantively in his review of voluntary agreements.[5] However, unlike his attitude toward more traditional voluntary agreements, the Attorney General showed considerable toleration for inactive small business pools.

Small business pools were given separate legislative authorization in 1953, when Congress approved the Small Business Act. This act replaced the Small Defense Plants Administration with the Small Business Administration and established authority for creating small business pools. (Authorities for antitrust relief for cooperative small business ventures, currently found in 15 U.S.C. 638(d) and in 15 U.S.C. 640, are reprinted in Appendix E.)

Like the DPA voluntary agreements program, this program has been relatively quiescent since the mid-1950s.[6] However, unlike the DPA, the authorizing legislation has not been subject to constant turbulence, and the current provisions closely follow the original provisions of Section 708 of the DPA. (See Appendix C.) Thus, small business manufacturing pools have a considerably clearer path to approval than defense-oriented voluntary agreements. This program represents a more permissive model for approving industry cooperation, but does not represent an effective substitute for voluntary agreements. Undoubtedly, the program could be more effective than it was in the past, and it would have the indirect impact of broadening defense production capabilities. However, because participation is limited to small businesses and the purpose is to foster business opportunities rather than to promote increased production, its impact would be limited.

Responding to challenges from abroad, Congress and the Executive Branch have promoted changes in U.S. antitrust law to encourage collaborative efforts in research and development. One of the products of this effort is the Research and Development Joint Venture (RDJV).

Like small business manufacturing pools, RDJVs do not face the procedural obstacles of DPA voluntary agreements. Because of some common objectives, they may serve as an alternative means of accomplishing some of the purposes of voluntary agreements. For instance, both can serve to promote product and process standardization. RDJVs do so through a common R&D effort, while the voluntary agreement generally involves the choice of one product design or process from among a number already in existence. However, because of the differing objectives -- the RDJV is limited to R&D, while the voluntary agreement is geared to increased production capabilities -- the relationship is only tangential and the potential utility is limited.

5.2.2 R&D Joint Ventures

On October 11, 1984, the National Cooperative Research Act of 1984 (hereafter referred to as "the Act") became law (Public Law 98-462). The purpose of the Act is to reduce the risk of antitrust litigation for research and development joint ventures.

The law seeks to encourage the cooperation of firms in activities whose purpose is:

- Theoretical analysis, experimentation, or systematic study of observed fact
- The development or testing of basic engineering techniques

- The extension of investigative findings into practical applications for experimental or demonstration purposes.
- The collection, exchange, and analysis of research information
- The establishment and operation of facilities for conducting research
- The prosecution of applications for patents and the granting of licenses for the results of such a RDJV.

The Act explicitly excludes:

- Exchange of information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product or process that is not required to conduct research under the RDJV
- The production or marketing by any party to such a venture of any product, process, or service other than the production or marketing of information developed through the RDJV.

The Act therefore attempts to limit the purpose of RDJVs in such a way as to encourage only joint ventures in basic research far removed from current price and output decisions.[11]

To encourage joint projects falling within the law's definitions, the Act encourages the courts to treat RDJVs in a special way. First, the Act states that in any actions under the antitrust laws the courts should apply the "rule of reason" rather than assuming that RDJVs are illegal "per se." The basic distinction between the "rule of reason" approach and "per se" rules under U.S. law is that, with the former, the courts will embark upon a careful factual inquiry to determine

whether, on balance, competition is suppressed, whereas suppression of competition is automatically presumed for practices falling clearly within the bounds of "per se" proscription.[12]

> "[M]erely because a joint R&D venture has some anticompetitive effect" say the Act's sponsors, "it is not automatically illegal; a weighing process is necessary."[13]

Thus, the "rule of reason" approach makes it more difficult to sustain antitrust charges.

Second, the Act sets forth limitations on the recovery of damages, so long as the venture is reported to the Department of Justice and the Federal Trade Commission pursuant to Section 6 of the Act. Under current antitrust law, plaintiffs are entitled to treble damages. The Act restricts plaintiffs to "actual damages" in an attempt to reduce the risks involved in joint R&D. Such risks are considered hard to assess because of the continually evolving nature of joint R&D and because the potential damage exposure is highly speculative when a firm must decide whether or not to join a venture.

Finally, the Act allows prevailing defendants to collect a reasonable attorney's fee from the plaintiff. Current antitrust law permits only prevailing plaintiffs to recover attorney's fees. The sponsors of the Act feel that this provision offers a strong deterrent to those who might consider bringing unwarranted actions against joint R&D ventures.[14]

In exchange for damage protection, the Act requires parties voluntarily seeking protection from treble damages to disclose the nature and objectives of their venture to the Attorney General and the Federal Trade Commission. This

notification would trigger public notice, via the Federal Register, thus permitting private parties to inform the anti-trust agencies of any behavior thought to be harmful to their interests.[15]

According to the sponsors of the Act,

> Joint R&D among American firms is essential if these firms are to meet successfully the challenge of foreign competition.[16]

The best known example of a new RDJV is the Microelectronics and Computer Technology Corporation (MCC).[17] The company, owned by 19 leading U.S. high-technology firms, began research operations early in 1984. The 19 owner companies are: Advanced Micro Devices, Allied, BMC Industries, Boeing, Control Data, Digital Equipment, Eastman Kodak, Gould Inc., Harris, Honeywell, Lockheed, Martin Marietta Aerospace, Mostek, Motorola, National Semiconductor, NCR, RCA, Rockwell, and Sperry. Each of these corporations holds one share of MCC and each has one employee on MCC's board of directors and one employee on a technical advisory board.

The aim of the joint venture is to foster basic research for a fifth generation computer with capabilities well beyond today's state-of-the-art. Specifically, the aim is to beat the Japanese in the race for such technology. The results of research conducted by MCC will be used by the individual companies. The 19 stockholders have exclusive rights to proprietary information for three years, after which MCC will license its patents to others. Licensing profits are distributed between stockholders (70 percent) and the joint venture for future projects (30 percent).

5.2.3 Research and Development Joint Ventures Compared to Voluntary Agreements

RDJVs represent an effective way to harness private sector initiative and could certainly be used to promote defense preparedness. They may become a prime method of developing new technologies. RDJVs could serve some of the objectives of voluntary agreements as well. By promoting standardization from the outset of product and process development, RDJVs reduce the need for standardization among different companies later in the development stage or even after production has begun. However, RDJVs represent only a limited alternative to voluntary agreements. They offer little in the way of enhanced industrial responsiveness to an emergency. To begin with, these joint ventures are private initiatives and so are likely to be less responsive to Government needs, particularly when these needs might conflict with private objectives. More important, RDJVs are far removed from the provision of goods and services and so are not oriented towards satisfying the types of results which voluntary agreements would generally be designed to provide during an emergency.

5.3 TECHNIQUES FOR ACHIEVING MULTIPLE PROCUREMENT SOURCES AND PRODUCT STANDARDIZATION

The Department of Defense currently uses a variety of techniques for achieving multiple procurement sources and product standardization. These include:

- Form, Fit, and Function
- Technical Data Package
- Leader-Follower
- Licensing

- Contractor Teaming.

This section describes each of these techniques and analyzes the extent to which each serves common purposes with the voluntary agreement approach. This analysis suggests that some production-related purposes served by voluntary agreements can be achieved through the normal contracting process without the need for antitrust immunity (and, thus, without the need for a voluntary agreement).

The form, fit, and function technique involves procuring items to meet common functional, rather than product, specifications. Items are designed and manufactured differently by each supplier but must comply with common performance, size, weight, external configuration, interface, and mounting specifications. While this is a useful technique for purchasing items where alternate specifications are desired, this technique does not support the objectives served by voluntary agreements. The separate design effort by each potential supplier is not conducive to a rapid and substantial increase in production, and the different item designs are not conducive to standardization and interchangeability. Thus, the focus of a production-oriented voluntary agreement -- solving bottlenecks by exchanging know-how, parts, and materials -- would not be served by this method.

The technical data package approach to creating multiple sources of supply involves the Government providing sufficient technical data to an alternate supplier to permit duplication of an item. In order to provide this data package, the Government must first obtain and validate the required information. Technical data packages would be an essential element of a voluntary agreement, as they would provide the basis for "educating" new producers. However, this approach,

by itself, is a poor alternative to the voluntary agreement method. It does not create alternate sources rapidly, because each alternate source is left to his own devices to translate the technical data into production capabilities. Voluntary agreements are designed to reduce or eliminate this time-consuming translation/learning time. Moreover, use of a technical data package necessitates a more cumbersome and time-consuming process for instituting design changes. Voluntary agreements serve to expedite this process.

The leader-follower technique involves the developer/producer of an item (the leader) providing technical assistance to another company (the follower) to enable that company to produce the item. The objectives of this technique coincide remarkably well with those of the voluntary agreement approach (especially the purposes served by the Air Force production committees discussed in Chapter 4). The objectives of the leader-follower technique listed in Subpart 17.4 of the Federal Acquisition Regulation are to:

- Reduce delivery time
- Achieve geographic dispersion of suppliers
- Maximize the use of scarce tooling or special equipment
- Achieve economics in production
- Ensure uniformity and reliability in equipment, compatibility or standardization of components, and interchangeability of parts
- Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions

- Facilitate the transition from development to production and to subsequent competitive acquisition of end items or major components.

By the nature of the leader-follower approach and its objectives, it appears to be an excellent alternative to a voluntary agreement in applications focusing on multiple prime contractors producing the same item. Historically, this would include all of the Air Force production committees and a number of the Army integration committees that combined an item's developer with one or more additional producers. (It would not, however, apply to the integration committee, which brings together the entire structure supporting a program.)

Procurement agencies might find, during an emergency, that a voluntary agreement can facilitate the rapid production from sources by providing an added measure of protection and promoting more effective cooperation. However, the improvements would probably be marginal -- the emergence of the leader-follower contracting method undoubtedly reduces the need for production committee-type voluntary agreements. Especially if current elaborate procedures for establishing and operating voluntary agreements remain in effect (see Chapter 3), the leader-follower technique may be preferred by both procurement agencies (for reasons of speed and convenience) and contractors (because the limited antitrust protection afforded by voluntary agreements may not counteract the disadvantages of substantial disclosure requirements).

Licensing involves the provision of manufacturing data and, perhaps, production assistance by one company to another in exchange for royalties or fees. It can be quite similar to either the technical data package or leader-follower approaches. The degree of similarity depends on the

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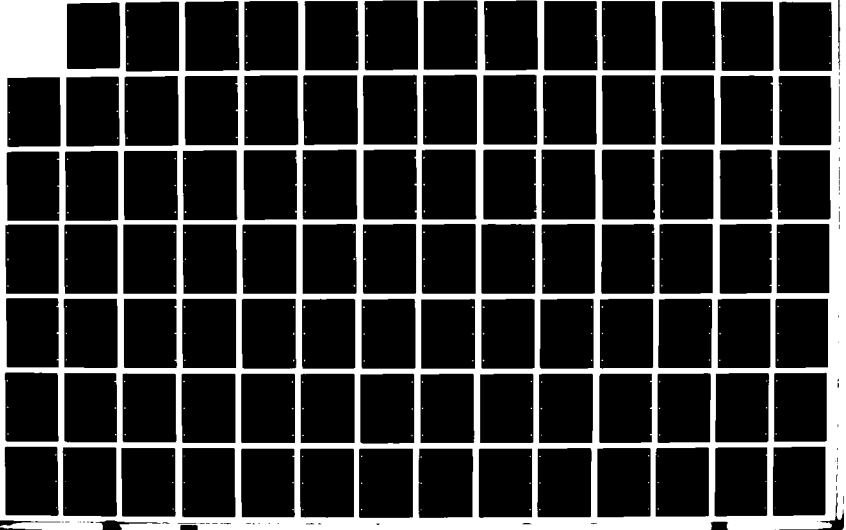

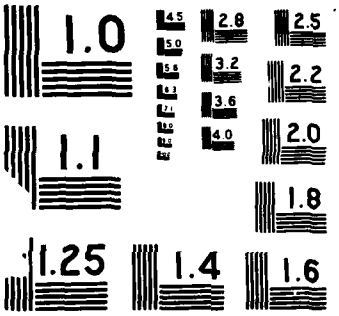
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level of assistance provided by the licensor to the licensee. If only data are provided, licensing is a poor substitute for a voluntary agreement, but if technical assistance is added, a licensing arrangement may take on many of the trappings of a voluntary agreement.

Contractor Teaming involves two or more companies combining to develop a system. Each company designs components of the system and then provides other team members with the necessary information for producing these components. In this fashion, each company acquires the capability of producing the entire system. While this approach would lead to initial standardization and interchangeability of items produced by different companies, it falls short of addressing the objectives of rapid production increases and ongoing coordination among companies producing similar items.

5.4 SUMMARY

This chapter has described several methods that are analogous in some ways to voluntary agreements. They provide alternative ways to utilize private sector resources, both in peacetime and during emergencies. All have the virtue that they are procedurally less complex than voluntary agreements under present legal requirements. Some of these methods, including technical data packages and licensing, may be important components of applying voluntary agreements, by helping to qualify and train new producers. Others -- notably the leader-follower procurement method -- may replace voluntary agreements in certain applications. Some, including RDJVs and the form, fit and function techniques, reflect novel ways of utilizing private sector expertise that could be as useful in an emergency as during peacetime. However, none of these techniques provides

the comprehensive scope of the voluntary agreement technique and they are not adequate substitutes for the specific applications envisioned for voluntary agreements. Voluntary agreements (supplemented or replaced, perhaps, in certain instances by leader-follower) offer the only effective method of accomplishing the desired purposes during an emergency.

ENDNOTES

1. "Second Quarterly Report of the Small Defense Plants Administration," April 15, 1952, pp. 19-20.

2. "Third Quarterly Report of the Small Defense Plants Administration," July 15, 1952, pp. 13-14.

3. U.S. Senate, Committee on Banking and Currency, "Report on Review of Voluntary Agreement Program Under Defense Production Act," Government Printing Office, Washington, February 28, 1956, p. 9.

4. Ibid., p. 5.

5. Ibid., p. 26.

6. One new small business manufacturing pool was recently approved to allow a consortium of New England small businesses to bid on Air Force contracts. Because of the general unfamiliarity with this statute, and the lack of precedent, it took two years to obtain approval for this agreement. (See Williams, Karen Hastie, "Small Business R&D and Defense Production Pooling: The SBTG Joint Venture," a paper presented to the Federal Bar Association, September 20, 1984.)

7. The literature on this subject is extensive. We will mention just three excellent studies here: The Industrial Policy Debate, Congressional Budget Office, Washington, 1983; Zysman, John, Governments, Markets, and Growth, Ithaca, N.Y., 1983; and Zysman, J. and Tyson, L., American Industry in International Competition, Ithaca, N.Y., 1983.

8. "The Furor Over America's Ability to Compete," Business Week, September 10, 1984, pp. 89-90.

9. Federal Support for R&D and Innovation, Congressional Budget Office, Washington, April 1984.

10. "Summary of the Use of the R&D Limited Partnership," Department of Commerce, December 6, 1982.

11. Conference Report (to accompany S. 1841), Report No. 98-1044, House of Representatives, U.S. Congress, Sept. 21, 1984, p. 11.

12. Industrial Market Structure and Economic Performance, F.M. Scherer, Boston, MA., 1980, p. 502.

13. Conference Report, op. cit., p. 11.

14. Ibid., p. 14.

15. Ibid.

16. Ibid., p. 13.

17. "The Race for the Fifth Generation Computer," National Defense, December, 1984, pp. 36-41.

6. POTENTIAL USES AND PROBLEMS

In this chapter, we relate past uses of voluntary agreements to their current and future applications. We examine the current need for and purposes of voluntary agreements. We also examine the problems of implementing voluntary agreements in today's world.

6.1 THE NEED FOR VOLUNTARY AGREEMENTS

In planning for possible uses of voluntary agreements, it is important to consider ways voluntary agreements were used in the past and reasons why voluntary agreements might be more important or less important in today's world. The following sections consider some of these factors.

6.1.1 Why Voluntary Agreements Could Be More Important

Three factors could provide a more central role in the future for voluntary agreements: the increasing importance of time and the accompanying importance of actions that can reduce administrative lead times in a crisis; the potential application of voluntary agreements to situations other than all-out mobilization; and the national trend to deregulate industry and to shun direct economic control measures.

In past conflicts, the U.S. has had substantial warning. During World War I and World War II, the war started two years prior to U.S. involvement, and, in the Korean conflict, although the North Korean army invaded without warning,

the U.S. interpreted that event as the possible opening act of a worldwide war and acted effectively to prepare for the possibility of wider conflict. In the early stages, at least, there was time to recover from initial mistakes. In a future conflict, preparatory time might be more limited.

In view of the limited expansion capability of current defense producers, voluntary agreements would almost certainly be needed in any future crisis to permit rapid production increases. Military products have become increasingly more complex and specialized. Accordingly, more education of new producers may be needed as the compatibility of commercial and military production methods diverges.

A second factor is the possibility that voluntary agreements could be useful in a variety of conflict scenarios considerably short of total war or for situations that do not even involve imminent conflict. As we mentioned in Section 1.3.2, two of the agreements studied in this report, the B-47 Production Committee and the M-14 Rifle Integration Committee, were interesting because their objective was to promote rapid and more efficient peacetime "surge" production. In both cases, deteriorating world events suggested the need for rapid production, but neither program was immediately required for current or imminent conflict. (The B-47 was procured during the Korean conflict, but it was a strategic bomber, and its rapid procurement was desired to increase preparedness, not for immediate Korean conflict needs.) However, this potential application has not been a major consideration for program planners. It is possible to envision a large number of situations -- resupply of an allied state in anticipation of conflict or after conflict, a change in U.S. force structure or equipment supply patterns, a surge of selected types of munitions, etc. --

where rapid increases beyond the capabilities of current producers might be desired, and where a voluntary agreement could be useful.

Similarly, voluntary agreements might be used in non-conflict emergencies. For instance, efforts to reconstitute defense industry after a catastrophic earthquake or similar natural disaster might be expedited by voluntary agreements, which would allow firms to exchange inventories and order boards, determine where available capacity can be found, and coordinate recovery in other ways.

A third factor suggesting that voluntary action could be more important is the increased opposition to government regulations and direct government economic controls in recent years. The Reagan administration represents this viewpoint especially strongly, but the general decontrol philosophy has been gaining adherents for many years. Voluntary agreements might be a key ingredient of an emergency management strategy favoring reliance private sector actions over direct government regulation.

6.1.2 Why Voluntary Agreements Could Be Less Important

There are also reasons why voluntary agreements might be less important, at least in some areas, than they were in the past. The world has changed considerably since the mid-1950s, and new techniques have been developed that could make some types of voluntary agreements obsolete. The leader-follower contracting method (discussed in Section 5.3) is one example of a new contracting method that appears to be able to accomplish routinely many or all of the objectives formerly carried out by a production committee. The government also makes use of advisory committees and other procedures to convey

its plans and requirements and, in some cases, even to facilitate exchange of technology and production breakthroughs. (The Manufacturing Technology Advisory Group is one case in point.) Thus, there may be some areas where voluntary agreements would be needed considerably less in the future than in the past.

6.1.3 Establishing the Need for Voluntary Agreements

Voluntary agreements could be a key element of an enhanced preparedness strategy. The recent efforts to develop a new preparedness strategy have stressed two important new concepts:

- The need to develop flexible plans and capabilities that can respond to a wide range of conflict and non-conflict emergencies.
- The intent to enhance the role of the private sector in both developing emergency preparedness plans and in coordinating actual responses, with a corresponding de-emphasis of direct government regulation.

Voluntary agreements can support both of these objectives. However, they are only one element of a new preparedness strategy.

Even if a voluntary agreement might satisfy the desired objectives, other options should be considered to determine whether there are different ways to accomplish these objectives without raising antitrust problems.[1] Many of the possible purposes of a voluntary agreement might be accomplished through routine administrative action or use of established

contracting methods, through establishment of advisory committees, or through consultation with trade associations or other unofficial bodies.

6.2 BARRIERS TO USE OF VOLUNTARY AGREEMENTS

Especially in peacetime, one barrier to use of voluntary agreements should be self-imposed. There will always be political resistance to widespread antitrust relief. Every mobilization has been accompanied by complaints that the mobilization fostered unhealthy, anticompetitive tendencies in the American economy. As a result, of these concerns, authorities for antitrust immunity and for government-industry coordination have become steadily more constrained. Abuses recognized in a past mobilization were generally prohibited the next time around. By 1950, many activities central to past cooperative efforts were specifically prohibited. For instance, gathering of information about industry capabilities, one of the principal functions of World War I committees, was regarded as "repugnant" by the Attorney General during the Korean War. In this sense, the process of narrowing the scope of voluntary agreements began in 1941 at the onset of WWII and continued through the 1975 amendments to the DPA.

A review of the current requirements and the legislative history (see Chapter 3) suggests that the pendulum may have swung too far. Given the potential contributions of voluntary agreements to our national security, it is difficult to understand why stricter standards should apply to the program than those applied to the programs that sponsor contracting opportunities for small business (see Section 5.1) and joint research and development projects (see Section 5.2).

Of particular concern are:

- Procedural requirements and delays in establishing voluntary agreements
- Limits on the antitrust protection given participants, even after the agreement has been established
- Administrative requirements in the conduct of voluntary agreements, especially procedures requiring notice of meetings, open meetings, and disclosure of information.

An assessment of industry's attitude toward these requirements will be a principal focus of subsequent contract phases. It is quite possible that the limits on antitrust protection and the disclosure requirements could significantly limit the the willingness of industry to participate in voluntary agreements.

The other requirements may not be excessive <u>if time is not an important consideration</u>. While the requirements in Subsection 708(c)(1) of the Defense Production Act, defining the scope of an agreement and conditions that permit its formation, are strict, they do not preclude peacetime establishment of agreements. The procedures to establish agreements are workable as long as there is no need for haste. Thus, until the time when large numbers of voluntary agreements are needed, seeking major changes to these procedural requirements may not be a high priority.

Indeed, there is no guarantee that proposed amendments would be effective. As the recent experience with Title III of the DPA shows, peacetime efforts to correct deficiencies in preparedness legislation can result in adoption of even tighter requirements.[2] The requirements that applied to

voluntary agreements from 1955 until 1969 and the original 1975 proposal show how Section 708 could be made even more difficult to use.

Moreover, there is no guarantee that changes to Section 708 would be effective. Some of the changes adopted by Congress in 1975 were not new, but instead reflected legal adoption of requirements that had always applied administratively. Similarly, many of the procedural requirements could be perpetuated administratively even if repealed by Congress. While Section 708 would certainly have to be changed during a crisis, it is not clear that peacetime amendments are necessary or desirable. (In a subsequent report under this contract, TASC will review possible applications of agreements, assess industry's willingness to participate under the current ground rules and make final recommendations as to the need for considering changes to Section 708 of the DPA.)

6.3 POTENTIAL USES OF VOLUNTARY AGREEMENTS

After reviewing past applications of voluntary agreements, we conclude that there are two principal ways in which this authority might be used: to establish committees equivalent to the World War II and Korean War integration committees and to establish groups similar to those categorized in the Korean War as miscellaneous agreements.

6.3.1 Integration Committees

The factors that led the Army to establish integration committees are likely to exist in any future crisis. Integration committees could be desirable whenever:

- A number of firms are producing similar or identical defense equipment
- Materials, components, and production capacity are in short supply
- A need for timely increases in production dictates the addition of new producers.

Integration committees could be valuable on a widespread basis during conflict, whenever conflict is imminent, or to cope with the types of supply problems discussed in Section 6.1.1.

In the absence of a crisis, the role of such committees would be much more limited. In the main, integration committees would probably be limited in peacetime to technical discussions of new manufacturing methods, standardization, and other planning activities similar to those undertaken during the late 1950s and 1960s by the few committees continuing activities after the end of the Korean mobilization. It is unlikely that anything further would be needed, nor would the other activities -- allocating business, in essence -- be permitted. In the absence of an immediate crisis, political and economic forces will inevitably drive business and industry in the direction of more competition, less cooperation, and more "arms length" relationships -- the exact antitheses of the purposes of voluntary agreements.

The inevitable peacetime constraints represent a difficult tradeoff for sponsors of integration committees. Peacetime establishment of committees could have value during a conflict, and even the limited activities they could engage in might be useful, but such activities would probably be perceived, as they were in the past, as increasingly less relevant. It has always been difficult to sustain longterm interest in preparedness activities.

For these reasons, we conclude that integration committees would be very important during a conflict, to prepare for conflict, or to cope with a peacetime emergency that threatens defense preparedness, but that forming a broad-based program of active integration committees is not a high priority in a peacetime, "business as usual" environment.

6.3.2 Miscellaneous Agreements

Miscellaneous agreements, such as the credit restraint program, foreign petroleum supply agreement, and tanker capacity agreement described in Chapter 4 of this report, could play a central role in the future. Two transportation-related being pursued: the recently-reapproved tanker capacity agreement and the proposed Contingency Response (CORE) program.

In view of the increased opposition of Congress and the Executive Branch to government regulations (given greater emphasis by the Reagan Administration, but present in all recent administrations), voluntary cooperation by industry may be even more important in the future than in the past. Several different aspects are important to consider.

First, the regulatory "string" that formerly kept many industries (e.g., transportation, communications) under relatively tight control by the government, has been substantially loosened. Voluntary cooperative actions might be needed to provide information or coordinate an industry response that would simply have been directly managed by the government regulatory agency in the past.

Moreover, the planners' consensus of many years' standing that direct economic controls would be promptly applied during any future mobilization has been shattered, at

least for the present. Indeed, it cannot be concluded that even the election of a "liberal" Democratic administration would restore this planning assumption. The value of economic controls has long been hotly contested among economists, and many, liberal and conservative alike, believe that direct economic stabilization measures are undesirable. Thus, planners cannot rely on prompt application of these controls in a mobilization no matter how much they may desire them.

Voluntary programs of wage and price restraint, credit control, or similar measures, together with monetary and fiscal policies, could serve as an effective and more acceptable alternative. These programs would probably be regarded by both pro-controls and anti-controls advocates as "half a loaf," but they may also serve as a compromise that avoids direct government regulation, preserves the primacy of free-market forces, but nevertheless provides some measure of stabilization.

In view of the possible importance of these types of programs, it is important to consider whether the DPA, as presently constituted, would permit voluntary agreements for voluntary economic control measures. It is our conclusion that the DPA does permit these types of agreements so long as they are implemented for the purpose of facilitating mobilization or defense preparedness. That is, the DPA probably would not authorize voluntary credit controls merely to restrain peacetime inflation, but it would authorize such programs for defense preparedness purposes.

A voluntary agreement like the 1951 voluntary credit restraint program could easily be justified under the current authorities. This program was created to support the defense preparedness effort, not only by restraining inflation, but

also by helping to channel capital to defense-related purposes; by restraining speculation and commodity hoarding; by limiting non-essential expansion and construction projects; and by helping to channel materials, manpower, and other resources toward the defense program. It could be, and was, defended as an integral component of the mobilization strategy, above and beyond its contributions to economic stabilization. (See Section 4.2.)

In this context, we should note that the 1951 credit restraint program was authorized under Section 708 of the DPA, not under the (since-expired) Title VI. Title VI never provided authority for regulation of business or state and local government borrowing, so the repeal of Title VI in 1953 had no direct impact on the viability of a voluntary credit restraint program. Congress recognized this in 1952, when, besides repealing most of Title VI, it also specifically prohibited voluntary agreements for credit restraint.

Congress' 1969 amendments to the DPA were important, not only because they established a record of tacit congressional approval of these types of programs, but also because both the specific prohibition against voluntary credit restraint programs and the strict limitation of the scope of voluntary agreements were repealed. The 1969 definition of the permissible scope of voluntary agreements (carry out the purposes of the DPA) was probably broad enough to permit mobilization-related voluntary economic stabilization programs, and, under the present definition of scope (expand capacity or maintain preparedness), it may, if anything, be slightly easier to justify such programs. Thus, although we conclude that Congress was not successful in its 1969 attempt to use the DPA to authorize voluntary agreements for credit restraint as a general inflation-control measure, we believe that credit

control and similar stabilization programs could be approved under the present DPA if they had a direct relationship to defense mobilization or preparedness programs. In the present anti-controls and deregulation environment, this could be an important part of a mobilization planning strategy.

6.3.3 The Importance of Standby Voluntary Agreements

Although large numbers of voluntary agreements may not be needed in the absence of an emergency, they may be needed as soon as conflict starts or once pre-conflict preparedness activities intensify. The initial rearmament period, with a need for rapid conversion of new producers, possible shortages of materials, and confusion as to delivery schedules, component supply, and similar problems, is precisely when integration committees could be of greatest value.

Similarly, voluntary agreements might be needed immediately to respond to a major earthquake or other emergency. Yet, it would be impossible to establish them quickly when they are needed. This suggests the need to establish standby voluntary agreements in peacetime so that they can be activated quickly when needed. The operations of the Foreign Petroleum Supply Committee (see Section 4.4) could provide a model for a standby voluntary agreement program. The agreement existed continuously, but its principal ongoing function was to provide a basis for rapid development of tailored responses to specific emergencies. A comprehensive standby voluntary agreement program could provide flexibility to respond to a broad range of problems. Thus, we believe preparedness planners should place a high priority on identifying agreements that would be needed, identifying crisis stages that would require activation of agreements, and establishing standby voluntary agreements.

ENDNOTES

1. This consideration is required by the Defense Production Act. Subsection 708(f)(1)(B) requires the Attorney General to consult with the Chairman of the FTC and to find, before approving an agreement, that the purposes cannot be accomplished "through a voluntary agreement having less anticompetitive impact or without any voluntary agreement." Because of the significance of an antitrust waiver, and the availability of other options for accomplishing the same purpose, we believe this is an appropriate requirement to impose on the voluntary agreements process.

2. Starting with the 1980 hearings of the Ichord subcomcittee, efforts were made to "revitalize" financial assistance authorities in Title III. FEMA advocated legislation to remove several minor procedural barriers to Title III funding. However, the proposal was caught up by interagency and congressional political controversies between advocates of "reindustrialization" and "free market" approaches. The result was a two-year period of legislative gridlock during which the DPA lapsed on several occasions. At the end of the process, Congress adopted new provisions that make it much more difficult to use Title III instead of correcting the originally - identified problems.

7. VOLUNTARY AGREEMENT SYSTEMS MODEL

7.1 INTRODUCTION

The systems model for establishing and carrying out a voluntary agreement is spelled out in Section 708 of the Defense Production Act (DPA) and in Title 44, Chapter 1, Part 332 of the Code of Federal Regulations (CFR). As in the case of other standby agreement programs, however, the model for activating a standby voluntary agreement is not addressed by these documents but can be extrapolated from the procedures for activating the Voluntary Tanker Agreement.

While we noted no direct conflicts between the legislative and regulatory provisions, the CFR is slightly more restrictive than the DPA. This systems model describes the process as defined in the CFR. We note any of these procedures that are not required by the DPA.

7.2 ESTABLISHING A VOLUNTARY AGREEMENT

The process of establishing a voluntary agreement involves the following actors:

- Sponsoring Federal Official (hereinafter referred to as the Sponsor)
- Director, Federal Emergency Management Agency (hereinafter referred to as FEMA)
- Attorney General

- Chairman, Federal Trade Commission (hereinafter referred to as FTC)
- Interested Persons
- Other Federal agencies (if necessary).

The responsibilities and interrelationships of these actors are depicted in Figures 7.2-1 through 7.2-3 and described below.

7.2.1 Permission to Develop Agreement

Under Section 708 authority delegated either directly or indirectly by the President, the Sponsor proposes a possible voluntary agreement to FEMA and the Attorney General.[1] (In the case of voluntary agreements to carry out Title I of the DPA -- priorities and allocations -- FEMA is required to be the Sponsor.[2]) Sections 101 and 501(a) of Executive Order 10480 designate FEMA as the coordinator of voluntary agreements. In establishing and carrying out a voluntary agreement, a sponsor is subject to FEMA direction and control. If the Attorney General, after consultation with FTC, approves the proposal, the Sponsor may then meet with interested persons to develop an agreement. (See Figure 7.2-1.) The proposal submitted by the Sponsor must include the following four elements:

- The purpose of the agreement
- The factual basis for making the finding required in subsection 708(c)(1) of the DPA (viz., that "conditions exist which may pose a direct threat to the national defense or its preparedness programs")
- The proposed participants in the agreement
- Any coordination with other Federal agencies accomplished in connection with the proposal.

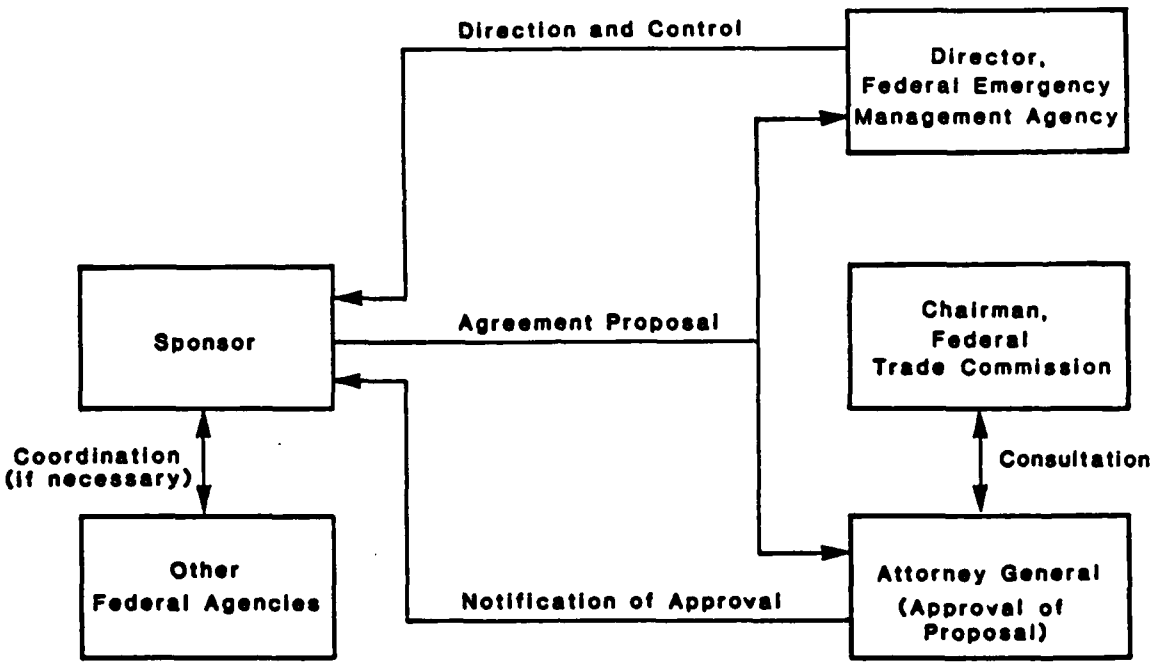

Figure 7.2-1 Approval to Develop Agreement

7.2.2 Development of Agreement

Before meeting to develop an agreement, the Sponsor must notify the Attorney General, FTC, and FEMA and must publish notice of the meeting in the Federal Register. The Sponsor chairs each meeting, and representatives of the Attorney General and FTC must attend. Interested parties may submit written views concerning the voluntary agreement, may attend the meeting (unless it is closed for reasons of national security or trade secrets), and may also make an oral presentation at the chairman's discretion. Finally, the Sponsor must supply a full transcript of each meeting to the Attorney General, FTC, and FEMA. (See Figure 7.2-2.)

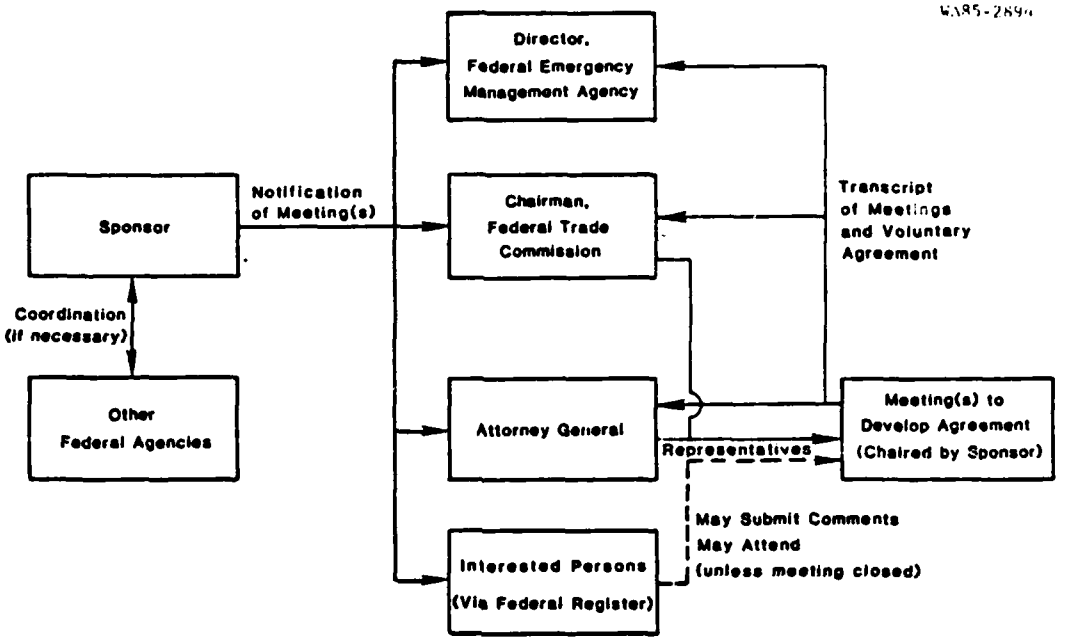

Figure 7.2-2 Development of Agreement

7.2.3 Effectuating an Agreement

Once the voluntary agreement has been drafted, the Sponsor must approve the agreement and provide certification that the agreement is necessary to carry out the purposes of Subsection 708(c)(1): to "provide for the defense of the United States by developing preparedness programs or expanding productive capacity and supply." FEMA must then approve this certification and submit the agreement to the Attorney General.[3] In order for the agreement to become effective, the Attorney General, after consultation with FTC, must issue a finding "that the purposes of subsection 708(c)(1) cannot reasonably be achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement." This finding is required for both new and renewed agreements. (See Figure 7.2-3.)

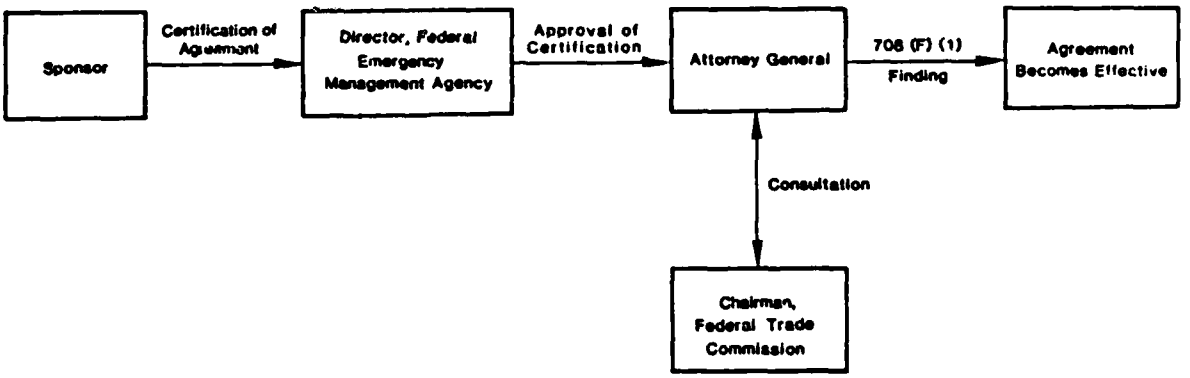

Figure 7.2-3 Effectuating Agreement

7.3 ACTIVATING AND CARRYING OUT A VOLUNTARY AGREEMENT

The previous sections summarize the legal requirements for establishing a voluntary agreement. Not one word is said, either in the statute or in the implementing CFR provisions, about activating a standby voluntary agreement. However, the process developed for the Voluntary Tanker Agreement provides one possible model.[4]

The processes of activating and carrying out a standby voluntary agreement would vary to the extent that Federal agencies other than the Sponsor have roles to play. For example, in the case of the Voluntary Tanker Agreement, the Maritime Administrator is the Sponsor, but the Secretaries of Defense and Transportation are both important actors as well.

The former triggers the process by requesting that the Administrator activate the agreement and by spelling out Defense requirements. Once the Tanker Requirements Committee meets and recommends tanker capacity contribution levels, the Secretary of Defense is then responsible for procuring that capacity apportioned for Defense needs. He is also responsible for requesting war risk insurance, if needed, from the Secretary of Transportation. The Secretary of Transportation is responsible for providing such insurance when it is requested. All of this is depicted in Figure 4.6-1.

This specific example of the activation and functioning of a voluntary agreement is depicted in a more general way in Figure 7.3-1. In this figure, the different potential roles of Federal agencies other than the Sponsor are depicted by dotted lines (variable connections) between them and standard actors in the voluntary agreement processes.

The activation process is initiated by the Sponsor, on his own or at the request of another agency. The Sponsor makes whatever finding might be required by the voluntary agreement and notifies FEMA, the Attorney General, and FTC. FEMA must concur in this finding before the Sponsor can activate the agreement. (If the agreement involves DPA Title I authorities, of course, FEMA makes these findings as the sponsor.)[5]

With this concurrence, the Sponsor carries out the agreement by scheduling meetings of the Participants in the agreement, but must notify FEMA, the Attorney General, and FTC of these meetings in advance. Every meeting must be attended by a Federal employee, who is traditionally a representative of the Sponsor and the Chairman of the meeting.[6] In addition to calling all meetings of Participants, the Sponsor is also

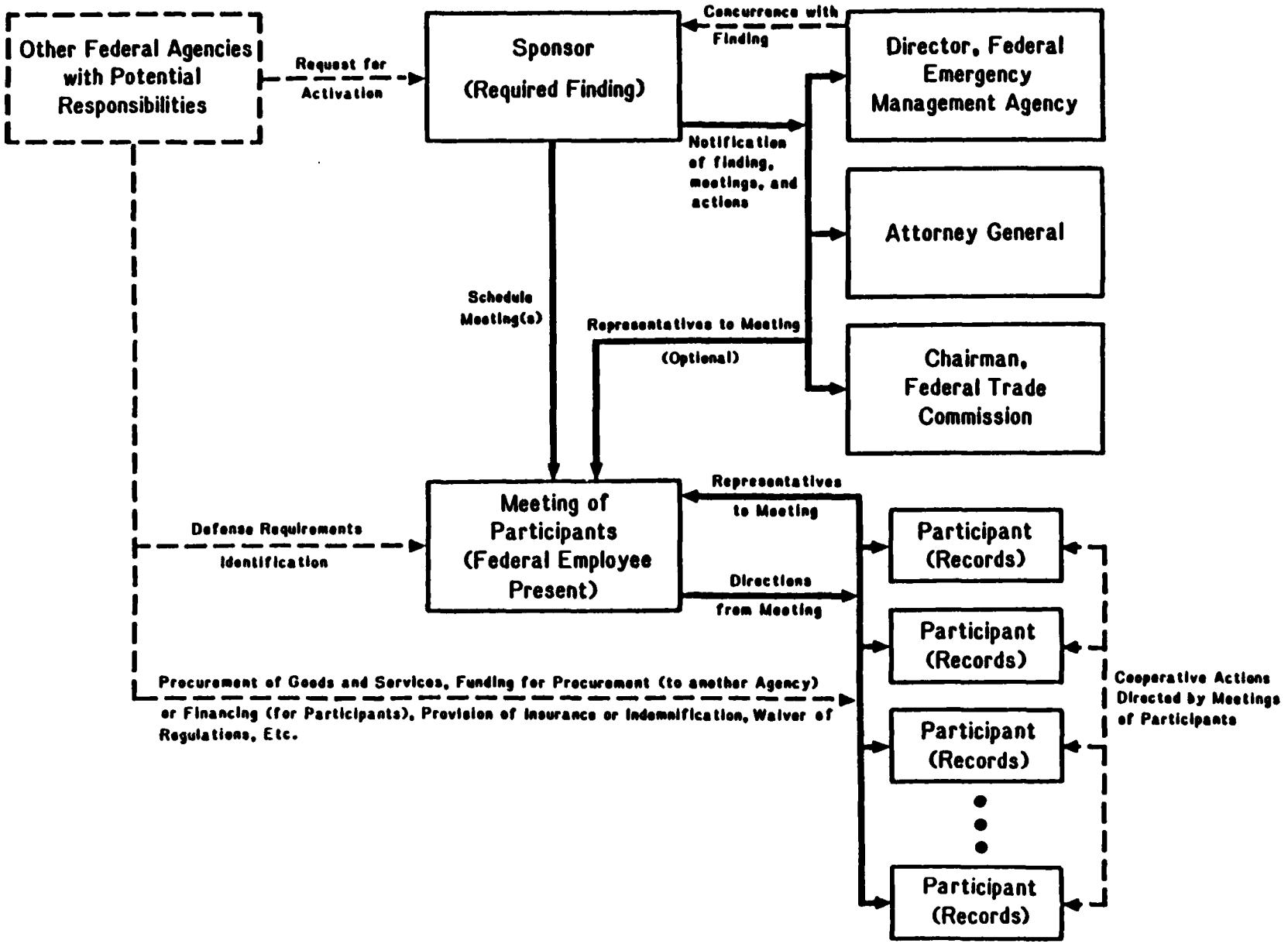

Figure 7.3-1 Activating and Carrying Out a Voluntary Agreement

responsible for determining policies and recommending actions with respect to the agreement and making decisions necessary to carry out the agreement. If the meeting is not closed, advance notice must be published in the Federal Register. If the meeting is closed, notification must be published within 10 days after the meeting.

Other agencies might be involved in a variety of ways (beyond requesting activation). These include:

- Identification of defense requirements to the Sponsor or Participants, so these requirements can be addressed in the meetings of Participants
- Procurement of goods and services from the Participants
- Funding for procurement from one agency to the procuring agency
- Financing to the Participants
- Provision of insurance or indemnification to a procuring agency or the Participants
- Waiver of regulations.

This is not meant to be a comprehensive list. It simply demonstrates the variety of Federal agency roles that might be played in conjunction with an active voluntary agreement.

Participants in an agreement are responsible for maintaining "for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement." They must also agree to make these materials available to the Sponsor, FEMA, the Attorney General, and FTC for inspection and copying.

Finally, a voluntary agreement may be modified or terminated by its Sponsor with the concurrence of or at the direction of FEMA, after consultation with the Attorney General or FTC. Or, the Attorney General may modify or terminate an agreement, after consultation with FTC and the Sponsor. A Participant in a voluntary agreement may terminate his participation in the agreement by written notice to the Sponsor.

7.4 CONCLUSIONS

As this chapter demonstrates, the process prescribed by the DPA to develop and approve a voluntary agreement is extremely complex and confusing -- complex because it requires a large number of actions by many different federal agencies and confusing because it does not describe these requirements in a simple step-by-step way.

The implementing regulations in the CFR eliminate some of the confusion by describing specific requirements more clearly, but also add somewhat to the complexity by requiring some actions and approvals that are not required by the law.

These additional requirements are most evident in the case of standby voluntary agreements. The total process of developing, approving, and subsequently activating a standby voluntary agreement would involve the following notifications and approvals:

- Three separate notifications of FEMA and the Attorney General (permission to develop, approval, and activation), <u>the third of which is not required</u> by the DPA
- Approval by the Attorney General in the first two cases, both of which are required by the DPA

- Approval or concurrence by FEMA in the last two cases, neither of which is required by the DPA.

It is a truism of public administration that requirements for interagency coordination or notification can delay governmental actions considerably. Requirements to obtain approval or concurrence of other agencies can cause even more delay and increase the risk that one agency will veto the other agency's proposals. While all of the additional notification and approval requirements can be supported on the basis that they allow FEMA and the Justice Department to carry out their statutory duties, these benefits must be balanced against the potential for delay during development of agreements or during an emergency.

Additionally, there are several areas where the regulation fails to address issues adequately. To clarify ambiguous sections, FEMA should consider:

- Modifying the CFR to mention the limitation on delegation of Presidential authorities in the case of Title I-related voluntary agreements
- Developing guidance (in the CFR or another document) that defines criteria for determining whether an agreement is related to Title I, who will make this determination, and how these decisions will be recorded
- Defining separate procedures for development and approval of Title I-related voluntary agreements, especially as they relate to the responsibilities of FEMA and the "sponsoring" agency
- Developing procedures for developing, approving, and activating standby voluntary agreements. Differences in the development and approval process (if any) should be noted and the process of activating a standby voluntary agreement should be defined

- Developing an informal handbook, similar to the Department of Commerce handbook outlining the Defense Priorities and Allocations System, to inform potential Sponsors and Participants about the program and to outline in a step-by-step fashion the procedures they must follow.

While none of the problems noted in this section are fatal barriers to development of voluntary agreements, it is important for FEMA to address them if it wishes to revive the voluntary agreements program. If regulations are unnecessarily complex, or if accepted procedures are simply not described adequately, the result is likely to be further confusion and delay in revival of this program.

ENDNOTES

1. The requirements for Sponsors to notify FEMA or obtain its concurrence are not defined by the DPA. Section 708 of the DPA provides for direct delegation of authority from the President to the Sponsors of voluntary agreements, and, except for voluntary agreements to carry out Title I of the DPA, does not require an overall program coordinator. While the program coordinator role provided by Executive Order 10480 and the CFR regulations is undoubtedly beneficial, the benefit of any given notification or approval requirement must be balanced against the extra time this coordination can add to the process of developing and implementing voluntary agreements.

2. The term "Sponsor" which is not used in the DPA is defined in the CFR provision implementing Section 708 as:

> ... An officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by Section 708 ...proposes or otherwise provides for the development or carrying out of a voluntary agreement.

This is a straightforward definition for most types of voluntary agreements, but creates potential confusion for one type of voluntary agreement -- agreements to carry out provisions of Title I of the DPA.

The DPA has always restricted delegation of Presidential authorities -- to consult with industry for the purpose of forming voluntary agreements -- to a single official (now the Director of FEMA) if the agreement is "to carry out the objectives of Title I." (The CFR fails to mention this requirement.)

As noted in Chapter 3, the 1975 amendments added a large number of new procedural requirements to develop a voluntary agreement. Some of these (e.g., to find that a voluntary agreement is needed, to issue rules, to chair meetings to develop the agreement, to approve the agreement and certify its need, to "administer" the agreement, and to report annually to Congress) are assigned by the DPA to the official who was delegated the Presidential authority. For agreements to carry out Title I, these functions must be performed by FEMA.

However, the law does not require this official to carry out all "sponsor" functions. For instance, the meetings to carry out the agreement -- which would normally be chaired by an employee of the sponsor -- could be chaired by an official of a different agency. Thus, in theory at least, the DPA would permit a Title I-related agreement to be "sponsored" by another agency, while the CFR appears to rule this out.

The failure to note the limitation on delegations, to describe specific procedures for Title I-related voluntary agreements, and to define the role of the Sponsor could cause considerable confusion. There are not even published criteria to define what sorts of agreements would be considered "agreements to carry out the objectives of Title I" or how agreements would be so identified. Because this ambiguity could delay efforts to establish agreements, FEMA should consider clarifying these issues by revising the CFR or publishing another document.

3. The DPA requires only that the Sponsor certify the need for a voluntary agreement and the Attorney General approve the agreement. The requirement for FEMA to approve this certification and submit it to the Attorney General is added by the CFR implementing regulations.

4. Both the DPA and the CFR implementing regulations regard approved voluntary agreements as active agreements, and do not distinguish between the approval and activation process. Because the concept of a standby voluntary agreement is not addressed by either the law or the regulation, the procedures for activating an already-approved voluntary agreement must be included in the agreement itself. If FEMA intends to pursue establishment of peacetime standby voluntary agreements -- as this report recommends -- it should consider defining policies or procedures for developing, approving, and activating these agreements. This would not only resolve potential confusion during establishment of these agreements but might also avoid the confusion that development of differing activation procedures could cause during an emergency when large numbers of these agreements might be activated.

5. The process of activating a standby voluntary agreement -- as prescribed for the Voluntary Tanker Agreement -- is similar to the process of approving an agreement. It provides the same requirement to notify FEMA and the Attorney General and to obtain FEMA's concurrence. Thus,

to activate a standby voluntary agreement, the Sponsor must repeat the entire approval process except for obtaining the Attorney General's approval.

It goes without saying -- since the concept of standby voluntary agreements itself is not mentioned in the DPA or the CFR implementing regulations -- that these notification and approval procedures to activate an already-approved standby voluntary agreement are not required by law or regulation. While it is a logical requirement to maintain some control over activation of agreements, it should also be noted that the requirement could delay activation of agreements during an emergency.

6. As noted in endnote number 1, in the case of Title I-related voluntary agreements (where FEMA is the Sponsor), this official could be an employee of a different agency.

8. FINDINGS

This chapter highlights our findings. The number following each finding indicates the section of the report where our finding is discussed. Recommendations will be included in our final report on voluntary agreements.

8.1 INTRODUCTION

- Although the use of voluntary agreements is not confined to mobilization, the agreements must be related to preparedness or mobilization programs (1.1)
- Voluntary agreements should not be widely used in a business-as-usual, peacetime procurement environment (1.3)
- Besides the commonly-accepted mobilization scenario, other likely applications of voluntary agreements include: peacetime surge of selected weapons systems; alleviation of serious peacetime production bottlenecks; averting disruption of production caused by interruption of foreign sources, strikes, sabotage, or natural disaster; or accomplishing national security-related economic purposes (1.3.1 through 1.3.5)
- Suggested peacetime uses of voluntary agreements are likely to be especially sensitive politically, and extra care is required to make sure that such agreements are structured carefully, with a limited purpose and a limited duration (1.3.6)
- Advisory committees represent an attractive alternative to voluntary agreements as a method to bring industry into peacetime preparedness planning (1.4).

8.2 INDUSTRY-GOVERNMENT COOPERATION BEFORE 1950

- During all three 20th Century mobilizations, the federal government has found it necessary to consult with business, and to allow peacetime competitors to collaborate with each other, in ways that would not be permitted in normal times (Chapter 2)

- The present voluntary agreements program can indirectly trace its ancestry to the improvised government-industry committees formed during World War I (Chapter 2)

- During World War I, committees of leading businessmen advised the government on industry capabilities, quantities and delivery schedules, prices, and allocations (2.1.3)

- Industry committees provided effective industry coordination with minimal red tape (2.1.6)

- Many critics charged that business obtained unfair advantages during World War I through the unconstrained operation of committees (2.1.4 and 2.1.7)

- The World War I committee structure fostered the modern trade-association movement and served as the model for initial economic recovery programs during the Great Depression (2.1.7)

- During World War II, industry-government consultation and cooperative industry actions were more structured than during World War I. Two distinct types of industry committees were formed: industry advisory committees to provide consolidated policy advice to national, non-military agencies; and integration committees, to assist military purchasing departments in solving production problems (2.2)

- Early in prewar rearmament, an informal procedure was developed to protect industry from antitrust charges. Ultimately, Congress approved legislation allowing war mobilization agencies to notify the

Attorney General when actions in the national defense interest should be protected from antitrust prosecution (2.2.1)

- Industry advisory committees were an effective method of providing industry viewpoints to war mobilization agencies (2.2.2)

- Integration committees assisted the military purchasing departments in solving materials and capacity shortages, promoting standardization, and solving other production problems (2.2.4)

- After the war, many critics contended that small business had been seriously damaged by war mobilization programs (2.2.6).

8.3 LEGISLATIVE HISTORY AND IMPLEMENTATION OF DEFENSE PRODUCTION ACT INDUSTRY COOPERATION AUTHORITIES

- Although there was no significant opposition to permitting collective action by defense industry, authors of Korean War preparedness legislation enacted safeguards in the Defense Production Act to guard against abuses (3.)

- Section 708 of the Defense Production Act, which authorized voluntary agreements, was modeled on World War II legislation but provided a more direct role for the Attorney General in reviewing such programs (3.1.1)

- Unlike World War II, when no formal distinction was made between advisory committees and integration committees, Congress separately authorized formation of advisory committees, in a section of the Defense Production Act that dealt with maximizing opportunities for small business in the mobilization program (3.1.2)

- Within a year of enactment of the Defense Production Act, 24 voluntary agreements had been approved. The technique was widely used in the Korean War to expedite defense production and to allow defense-supporting industries to solve problems that could impede the defense program (3.2.1)

- Advisory committee authority was widely used by national-level mobilization agencies. Many of the same procedures for approving voluntary agreements were adopted for advisory committees (3.2.2)

- President Truman and the Department of Justice both expressed reservations about the manner in which advisory committees were initially used. The Department of Justice threatened legal action if advisory committees were not structured in compliance with prescribed standards (3.2.2)

- After the end of the Korean emergency, use of advisory committees fell off rapidly. By 1955, the program was considerably less active (3.2.2)

- Congress approved significant restrictions on the voluntary agreements program in 1955, narrowing the scope of the program and increasing the role of the Attorney General in monitoring agreements (3.3.1)

- Use of voluntary agreements tapered off rapidly after the end of the Korean War. The decline of the program was well under way by the time Congress restricted the program in 1955, and continued throughout the 1950s and 1960s (3.3.2)

- A shift in program emphasis away from current mobilization programs and toward maintenance of a long-term mobilization capability could have revived the program, except that broader changes in national strategy, away from mobilization planning in favor of short-duration nuclear war planning, undercut any strategic rationale for the program. This mid-1950s change in

planning assumptions, together with the end of the Korean emergency, accounts for the decline in the program's activity (3.3.2)

- In 1969, Congress repealed the 1955 amendments to Section 708 of the Defense Production Act. However, this action was not motivated by a desire to revive the voluntary agreements program, but rather reflected an attempt to permit use of Section 708 for voluntary credit controls (3.4)

- In 1975, Congress adopted an entirely new version of Section 708, which added significant procedural obstacles to the formation and operation of voluntary agreements (3.5)

- Although new requirements limit the scope of voluntary agreements and the conditions under which they can be established, these requirements are less restrictive than the provisions in force between 1955 and 1969 (3.5.1)

- Procedures for creating and activating agreements are much more detailed than in the past. Significantly, the Attorney General must approve the agreement on two separate occasions before the agreement can be activated (3.5.2)

- Participants in voluntary agreements are no longer granted immunity from the antitrust laws for their participation in these agreements. Instead, they are offered a "defense" against antitrust charges, but must also show that the action was taken in good faith and in full compliance with the terms of the agreement (3.5.2)

- Rules for carrying out agreements are much more detailed than in the past. Participants must agree to disclose substantial quantities of information. Advance notice must be provided of meetings and interested parties must be permitted to attend, except under certain circumstances (3.5.3)

- The new requirements adopted in 1975 could significantly slow down implementation of voluntary agreement authorities in an emergency and could limit the willingness of corporations to participate in these programs (3.5.4).

8.4 EXAMINATION OF SIX VOLUNTARY AGREEMENTS

- During the Korean conflict, four types of voluntary agreements were established: Army integration committees, Air Force production committees, small business manufacturing pools, and miscellaneous agreements. Integration and production committees were established primarily to speed production and increase product standardization, production pools were established to create contracting opportunities for small business firms, and miscellaneous agreements were formed by non-defense industries to permit collective action in support of general mobilization goals (4.1.1)

- All forms of voluntary agreements were effective during the Korean conflict except for small business pools, which had little success in promoting business opportunities for small firms (4.1.2)

- The Voluntary Credit Restraint Program provided an effective means to control business credit and supported the defense program by restraining growth of debt, channeling capital from non-essential to essential expansion projects, limiting business inventory growth and hoarding, and diverting manpower and materials toward essential defense programs (4.2)

- Despite the effectiveness of the agreement, there was significant political opposition to the program, and it was terminated prematurely (4.2.2)

- The B-47 Production Committee was created in 1951 as a means to reduce problems associated with production of this radically different jet aircraft and to speed output during this period of emergency by allowing the existing producer to exchange information and coordinate production efforts with two additional (and competing) aircraft manufacturers (4.3.1)

- While the B-47 Production Committee is recognized as having expedited production of this much-needed aircraft during a time of emergency, most, if not all, of the benefits achieved through this committee could today be accomplished without setting up a voluntary agreement, but instead by employing a leader-follower contracting relationship (4.3.3)

- Petroleum supply voluntary agreements operated virtually continuously from 1951 to 1976 although, during most of this period, Foreign Petroleum Supply Committee activities were confined to an informational function. The Committee did prepare and submit to the Government plans of joint action in response to three petroleum supply crises in 1951, 1956, and 1967 (4.4.2)

- Petroleum supply voluntary agreements have been effective in times of crisis by providing information on petroleum supplies and coordination of oil supply efforts (4.4.3)

- Public suspicion of petroleum industry manipulations, whether or not justified, limit the acceptability of these types of programs (4.4.3)

- The M-14 Integration Committee was established in 1961 to help speed production of this new standard-issue rifle during a period of rising Cold War tensions by indoctrinating an additional manufacturer on production of this rifle (4.5.2)

- The Committee undoubtedly speeded production from the new producer; however, the benefit of this achievement was diminished by the

termination of this rifle program after a relatively short period of production. As in the case of the B-47, more rapid production of the M-14 might also have been achieved through other means not requiring antitrust immunity (4.5.4)

- The Voluntary Tanker Agreement is a standby program that would deal with the allocation of tanker capacity to meet DoD fuel transportation requirements during an emergency (4.6.1)

- The Voluntary Tanker Agreement was very effective during the Korean War but has not been used since. The current standby program saves the administrative time and resources that would otherwise be needed to create a voluntary tanker agreement during an emergency (4.6.3)

- The Voluntary Agreement of the Munitions Industry is a proposed plan to establish standby procedures for voluntary discussion and planning among private firms and Government arsenals for producing ammunition, propellants, and explosives in response to emergency defense needs (4.7.1)

- It is clear that previous munitions integration committees aided efforts to standardize small arms ammunition, for example, but it is less clear that standardization and other accomplishments would not have occurred in the absence of this committee. The Committee's existence undoubtedly speeded the process of improving ammunition production capabilities and probably led to more rapid ammunition production during the Korean War (4.7.3).

8.5 RELATED METHODS

- Small business manufacturing pools were originally authorized under Section 708 of the Defense Production Act, but are now authorized under the Small Business Act. The authority has not been widely

used in recent years, but, because Congress has not continuously restricted the basic authority, small business pools have a much clearer path to approval by the Attorney General than do voluntary agreements (5.1)

- Because of the limitation of this program to small business, this method does not provide an effective substitute for voluntary agreements, except in very limited cases (5.1)

- Research and development joint ventures, a method to improve competitiveness of U.S. industry, permit limited antitrust protection to participants in joint research and development projects. It is much easier to obtain approval for an R&D joint venture than for a voluntary agreement. However, because of the limited scope of these ventures, this technique does not provide an adequate substitute for most voluntary agreement uses (5.2)

- A variety of contracting methods are used to achieve multiple production sources and product standardization, two of the principal purposes of voluntary agreements. One particular method, the leader-follower contracting technique, addresses many of the same issues as voluntary agreements, and may serve as an effective substitute for certain applications. (5.3).

8.6 POTENTIAL USES AND PROBLEMS

- Voluntary agreements could be useful in a variety of situations other than all-out mobilization, such as: a selective surge of individual weapons systems, preparedness actions initiated in response to deteriorating world conditions, a need

APPENDIX A
EXCERPTS FROM THE SMALL BUSINESS MOBILIZATION ACT OF 1942

EXCERPTS FROM THE SMALL BUSINESS MOBILIZATION ACT OF 1942

The Small Business Mobilizaton Act (Public Law 77-603) approved in June 1942, provided general powers to the Director of the War Production Board, established the Smaller War Plants Corporation, and established procedures to assist small business in obtaining war contracts. Section 12, printed below, also established procedures for waiving the antitrust laws for actions taken in the national interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in addition to the powers and duties of the Chairman of the War Production Board defined by Executive Order Numbered 9024 of January 16, 1942, and by Executive Order Numbered 9040 of January 24, 1942, it shall be the duty of the Chairman of the War Production Board, and he is hereby empowered, through a deputy to be appointed by him, to mobilize aggressively the productive capacity of all small business concerns, and to determine the means by which such concerns can be most efficiently and effectively utilized to augment war production.

It shall also be the duty of the Chairman of the War Production Board, and he is hereby empowered, through the deputy so appointed by him, to cooperate to the fullest practicable extent with the Director of Civilian Supply and other appropriate governmental agencies in the issuance of all orders limiting production by business enterprises with a view to insuring that small business concerns will be most efficiently and effectively utilized in the production of articles, equipment, supplies, and materials for both war and essential civilian purposes...

Sec. 12. Whenever the Chairman of the War Production Board shall, after consultation with the Attorney General, find, and so certify to the Attorney General in writing, that the doing of any act or thing, or the omission to do any act or thing, by one or more persons during the period that this section is

in effect, in compliance with any request or approval made by the Chairman in writing, is requisite to the prosecution of the war, such act, thing or omission shall be deemed in the public interest and no prosecution or civil action shall be commenced with reference thereto under the antitrust laws of the United States or the Federal Trade Commission Act. Such finding and certificate may in his discretion be withdrawn at any time by the Chairman by giving notice of such withdrawal to the Attorney General, whereupon the provisions of this section shall not apply to any subsequent act or omission by reason of such finding or certificate.

The Attorney General from time to time, but not less frequently than once every one hundred and twenty days, shall transmit to the Congress a report of operations under this section. Reports provided for under this section shall be transmitted to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, if the Senate or the House of Representatives, as the case may be, is not in session.

The Attorney General shall order published in the Federal Register every such certificate and, when he deems it in the public interest, the details of any plan, program or other arrangement promulgated under, or which is the basis of, any such certificate.

This section shall remain in force until six months after the termination of the present war or until such earlier time as the Congress by concurrent resolution or the President may designate, but no prosecution or civil action shall be commenced thereafter with reference to any act or omission occurring prior thereto if such prosecution or civil action would be barred by this section if it remained in force.

APPENDIX B
EXCERPTS FROM SENATE JOINT RESOLUTION 167 (PUBLIC LAW 80-395)

EXCERPTS FROM SENATE JOINT RESOLUTION 167 (PUBLIC LAW 80-395)

This joint resolution, approved December 30, 1947, was concerned with stabilizing the economy. Section 2, printed below, provided authority for voluntary agreements to further these ends. The authority lapsed on March 1, 1949.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

DECLARATION OF PURPOSES

Section 1. The purposes of this joint resolution are to aid in stabilizing the economy of the United States, to aid in curbing inflationary tendencies, to promote the orderly and equitable distribution of goods and facilities, and to aid in preventing maldistribution of goods and facilities which basically affect the cost of living or industrial production.

VOLUNTARY AGREEMENTS

Sec. 2. (a) In order to carry out the purposes declared in section 1 of this joint resolution, the President is authorized to consult with representatives of industry, business, and agriculture with a view to encouraging the making, by persons engaged in industry, business, and agriculture, of voluntary agreements approved by the President---

(1) providing for allocation of transportation facilities and equipment;

(2) providing for priority allocation and inventory control of scarce commodities which basically affect the cost of living or industrial production; or

(3) providing for regulation of speculative trading on commodity exchanges.

(b) The President is authorized to approve any such agreement which he finds will carry out any of the purposes declared in Section 1 of this joint resolution, except that he shall not approve any agreement unless such agreement specifically provides that it shall cease to be effective on or before March 1, 1949, and he shall not approve any agreement which provides for the fixing of prices.

(c) Whenever a governmental officer or agency determines that a plan of voluntary action with respect to any material, commodity, or facility is practicable and is appropriate to the successful carrying out of the policies set forth in said Act, that agency or official may request in writing compliance by one or more persons with such plan of voluntary action as may be approved by the Attorney General. Any act or omission by such person or persons in compliance with a written request made pursuant to this section and with a voluntary plan promulgated thereunder shall not be the basis at any time for any prosecution or any civil action or any proceeding under the antitrust laws of the United States or the Federal Trade Commission Act.

(d) Such written request may, in the discretion of the governmental officer or agency which made the request, be withdrawn at any time by said governmental officer or agency which made the request, by written notice from said governmental officer or agency of such withdrawal to the Attorney General, and after publication of notice of such withdrawal in the Federal Register as provided in subsection (e), the provisions of this Act shall not apply to any subsequent act or omission by reason of such request or voluntary plan.

(e) The Attorney General shall transmit to the President pro tempore of the Senate and to the Speaker of the House of Representatives, and shall order published in the Federal Register every such request, and any withdrawal thereof, and any plan, program, or other arrangements promulgated under, or which is the basis of, any such request.

(f) The power to make requests conferred by this Act shall expire upon expiration of section 2 of this Act, and any requests made and voluntary plans adopted under this Act shall have no force or effect six months thereafter.

(g) As used in this section the term "person" means an individual, corporation, partnership, or association.

APPENDIX C
VERSIONS OF SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950

VERSIONS OF SECTON 708 OF THE DEFENSE PRODUCTION ACT OF 1950

Since its original approval in 1950, the voluntary agreement authority in Section 708 has been significantly modified three times:

- In 1955, when the scope of agreements was restricted and the Attorney General's role was increased
- In 1969, when the 1955 amendments (as well as a 1952 prohibition against voluntary credit control agreements) were repealed
- In 1975, when the entire section was re-written and major new restrictions were added.

The following sections reprint the differing versions of Section 708.

C.1 SECTION 708 AS APPROVED IN 1950

(a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States.

A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. The Attorney General shall submit to the Congress and the President within ninety days after the approval of this Act, and at such times thereafter as he deems desirable, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(f) After the date of enactment of the Defense Production Act Amendments of 1952, no voluntary program or agreement for the control of credit shall be approved or carried out under this section.

[Note: subsection (f) was not contained in the original, but was added in 1952.]

C.2 SECTION 708 AS AMENDED IN 1955

(a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States: "Provided, however, That after the enactment of the Defense Production Act Amendments of 1955, the exemption from the prohibitions of the antitrust laws and the Federal Commission Act of the United States shall apply only (1) to acts and omissions to acts requested by the President or his duly authorized delegate pursuant to duly approved voluntary agreements or programs relating solely to the exchange between actual or prospective contractors of technical or other information, production techniques, and patents or patent rights, relating to equipment used primarily by or for the military which is being procured by the Department of Defense or any department thereof, and the exchange of materials, equipment, and personnel to be used in the production of such equipment; and (2) to acts and omissions to acts requested by the President or his duly authorized delegate pursuant to voluntary agreements or programs which were duly approved under this section before the enactment of the Defense Production Act Amendments of 1955. The Attorney General shall review each of the voluntary agreements and programs covered by this section, and the activities being carried on thereunder, and, if he finds, after such review and after consultation with the Director of the Office of Defense Mobilization and other interested agencies, that the adverse effects of any such agreement or program on the competitive free enterprise system outweigh the benefits of the agreement or program to the national defense, he shall withdraw his approval in accordance with subsection (d) of this section. This review and determination shall be made within ninety days after the enactment of the Defense Production Act Amendments of 1955.

A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys, and the reports hereafter required, shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President within ninety days after the approval of this Act, and at least once every three months, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(f) After the date of enactment of the Defense Production Amendments of 1952, no voluntary program or agreement for the control of credits shall be approved or carried out under this section.

C.3 SECTION 708 AS AMENDED IN 1969

(a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the ojbectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President prusuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States.

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request of finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.

[Note: the requirement for a quarterly report was changed to an annual report in 1965.]

C.4 SECTION 708 AS AMENDED IN 1975

(a) Except as specifically provided in subsection (j) of this section and subsection (j) of section 708A, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section and section 708A the term "antitrust laws" means--

(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.);

(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9);

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a); and

(6) the Act entitled 'An Act to promote export trade and for other purposes', approved April 10, 1918 (15 U.S.C. 61-65).

(c)(1) Except as otherwise provided in section 708A (o), upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and the expansions of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the

condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the conditions that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1). For the purpose of carrying out the objectives of title I of this Act, the authority granted in paragraph (1) of this subsection shall not be delegated to more than one individual.

(d)(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3100 of title 5, United States Code) and shall include representatives of the public, and the meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public in inspection and copying, subject to the provisions of section 552(b)(1) and (b)(3) of title 5, United States Code.

(e)(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code--

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include--

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide among other things, that--

(A) such agreements shall be developed at meetings which include--

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate, and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b)(1) or (b)(3) of section 552 of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General and to the Chairman of the Federal Trade Commission; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to subsections (b)(1) and (b)(3) of section 552 of title 5, United States Code.

(f)(1) A voluntary agreement may not become effective unless and until--

(A) the individual referred to in subsection (c)(2) who is to administer the agreement approves it and certifies, in writing, that the agreement is necessary to carry out the purposes of subsection (c)(1); and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement.

(2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c) (2) who administers the agreement and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement in which case, the voluntary agreement may be extended for an additional period of two years.

(g) The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement to assure---

(1) that the agreement is carrying out the purposes of subsection (c)(1);

(2) that the agreement is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(h) The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements shall provide--

(1) for the maintenance, by participants in any voluntary agreement, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement;

(2) that participants in any voluntary agreement agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to subsections (b)(1) and (b)(3) of section 552 of title 5, United States Code;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement;

(6) that participants in any voluntary agreement provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement, unless the individual designated by the President in subsection (c)(2) to

administer the voluntary agreement finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b)(1) or (b)(3) of section 552 of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in subsection (b)(1) or (b) (3) of section 552 of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that--

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification; and

(10) that participants in any voluntary agreement be reasonably representative of the appropriate industry or segment of such industry.

(i) The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

(j) There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that--

(1) such act or omission to act was taken in good faith by that person--

(A) in the course of developing a voluntary agreement under this section, or

(B) to carry out a voluntary agreement under this section; and

(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.

(k) The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements.

(l) The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement in effect and its contribution to achievement of the purpose of subsection (c)(1).

(m) On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

APPENDIX D

DISCUSSION OF PROPOSED 1975 AMENDMENTS TO SECTION 708 OF THE DEFENSE PRODUCTION ACT

DISCUSSION OF PROPOSED 1975 AMENDMENTS TO SECTION 708 OF THE DEFENSE PRODUCTION ACT

The original Section 708 amendments proposed in 1975 were much more stringent than the version ultimately adopted by Congress. Testimony by Leslie W. Bray, director of the Federal Preparedness Agency, identified critical weaknesses in the proposal and the committee approved his suggestions. The testimony, discussion, and committee report excerpts below are important in demonstrating the congressional intent to permit use of voluntary agreements in preparedness activities.

D.1 PREPARED TESTIMONY OF LESLIE W. BRAY, DIRECTOR, FEDERAL PREPAREDNESS AGENCY

...Title VII also provides authority under which American industry and other interests may be called upon by the President to enter into voluntary agreements to assist Government in developing programs serving defense purposes without their violating the antitrust laws. This offers the President the viable option of achieving by voluntary and cooperative means what otherwise might have to be accomplished through the mandatory priorities and allocations of Title I. It is section 708 of this title which involves the major change proposed in the bill S.1537 before you today. I would like to direct my further remarks to this proposal.

In preface, let me say that I share with your Chairman the desire to see our laws reflect the needs of the present and to bring legislation affecting the national defense insofar as possible into conformity with those needs, as well as the desire to achieve compatible authorities in different sections of law.

On first view, the present change to section 708 would appear to be legislation designed to assure parallel and compatible administration of Voluntary Agreements. But I do not believe this to be the case. Much of the language of the subject measure was patterned upon the requirements of a specific

case -- to provide open discussions of the circumstances in which our oil companies are given antitrust immunity in certain international programs for the control of oil in future embargo type emergencies. The new language would replace the entire present provisions of 708, thus placing explicit constraints on the formulation of any defense-related voluntary agreements that may in the future be found desirable.

In my view, this would harm the limited flexibility presently written into the Act. I am particularly concerned that our industries may not in the future wish to participate fully with their Government in such agreements, to make available company information, and to develop timely and effective measures to meet sudden or unforeseen defense needs, by reason of the new requirements. I'm sure that they, like most of our citizens today, see the desirability of conducting public business in a forum in which all may be heard; and many voluntary agreements can be conducted successfully in this manner. If time allows and the agreement is such as not to reveal to foreign competitors or potential foreign enemies the proprietary data or measures that may be necessary, the open hearings and full dislcosure provisions are appropriate. But in the future when the mechanism may need to be used to develop and implement new weapons systems production and the tactical or strategic requirements of our armed forces, the amended provisions will probably not allow this.

The present provisions of the law limit such agreements to support of Government programs, require their direct supervision by an official of the Government, provide for approval of requests to act by the Attorney General in consultation with the Federal trade Commision, and further require the Attorney General to report annually on such programs to the Congress. If there had been serious misuse of the existing authority in the past, I could understand the concerns that prompt the present proposal. But, to my knowledge, this has not been the case.

Today, of the eight voluntary agreements in existence, only one is presently in active use. Five are Army Integration Committees reserved for industrial mobilization planning to meet wartime munitions needs. The Tanker Capacity Agreement is inactive and must receive Attorney General approval to convene. The Foreign Petroleum Supply Committee is not in use and any new plan of action by it would have to be approved. The one active agreement is that already mentioned relating to the International Energy Program as recently developed by the Federal Energy Administration in cooperation with the Department of State to allow American companies to participate with representatives of member nations of the Organization for Economic Cooperation and Development in the event of a future embargo on world oil shipments.

I view these agreements in a two-fold light. Those like the present international energy agreement, which is designed to fill a particular need with an important public interest at stake and with reasonable time for discussion and review of the contemplated program at least before an emergency is upon us, are of the first type. These perhaps belong in other laws and are being so addressed. Then there are those agreements with the purpose of supporting the preparedness planning for our national defense, such as the Army Integration Committees, and those which must be hastily created or convened to counter immediate threat to the Nation. I would place these in the second category. The existing section 708, unchanged, speaks very well to the latter.

To impose the requirements of the change upon all voluntary agreements, including those in existence and any which may be needed in the future, raises specific difficulties which I will briefly address.

Subsection (c)(1) of the proposed new section 708 would limit the use of the authority to a condition of "imminent or probable danger to the national defense" and to the purpose of insuring "productive capacity in the event of an attack on the United States." A strict adherence to this would mean that voluntary agreements could only be undertaken if the country were in imminent danger of attack, and then only for the purpose of insuring production capacity. This is a very narrow band of emergency situations with which the Nation might be faced, and I doubt that in such extreme conditions there would be time to get formal voluntary agreements into being. We need to do preparedness in advance, not only for production, but also for distribution of supply and management of services for many conditions of mobilization. And we may need the cooperation of industries to do this.

In my view, therefore, voluntary agreements under this Act should have the same purpose as that of other authorities in the Act, i.e., to promote preparedness and the national defense.

There is a basic inconsistency between subsections (c)(2) and (c)(3) of the bill. The first says that the President will delegate the authority only to appointed officials of the Government and, with respect to carrying out the purpose of Title I, only to a single official of the Government. Then in subsection (3), rather than giving to the official(s) so designated the determination as to whether a proposed voluntary agreement falls within the aforesaid purpose or objectives, the bill assigns this to the Attorney General. The Attorney General does not function to determine substantive objectives of national defense programs and clearly should not have this task.

This same difficulty is found in subsections (f), (h), (j)(1), and (j)(2). The Attorney General and the Federal Trade Commission are inappropriately given program responsibilities with respect to accomplishing the purpose of the Act and for administering the rules and regulations under which voluntary agreements will proceed in futherence of Government programs. These functions are more properly the task for the principal administrative official designated by the President in connection with the purpose and substance of the program of the particular voluntary agreement. The Attorney General and the Federal Trade Commission, should, of course, maintain their function of protecting the public interest with respect to antitrust and trade laws.

A major difficulty arises in connection with subsection (g)(4). The limitations on disclosure of transcripts and agreements are significantly different from the requirements of section 552(b) of Title V, U.S. Code and impose unnecessarily difficult constraints on pursuing the business of these agreements in defense emergency situations. A related difficulty is found in section (h); not so much in what it provides but what it does not. It would exempt certain classes of meetings, conferences or communications from the requirements of verbatim transcript and from public inspection of transcripts. But it makes no provision for excepting subsections (e)(1)(A) and (g)(1) with respect to open and public meetings when national security or other matters of classified or proprietary nature may be the subject of discussion. As I indicated before, this condition may be entirely appropriate for certain agreements, but other types with constrained but urgent defense objectives are the ones we are primarily concerned with here.

D.2 COLLOQUY BETWEEN SENATOR PROXMIRE AND LESLIE W. BRAY

THE CHAIRMAN... In your prepared remarks, you suggest that there are three areas in the proposed amendment section 708 that cause you special concern. These are: (1) the provision of subsection (c), which limits the use of voluntary agreements to times of a probable or imminent threat to national security; (2) the apparent program roles accorded to the Justice Department and the Federal Trade Commission which involve them in second-guessing or vetoing the decisions of, say, the Federal Energy Administration or the Department of Defense; and (3) the possibility of requiring disclosure of classified national defense information.

GENERAL BRAY. Yes, sir.

THE CHAIRMAN. And I am perfectly willing to modify the legislation to meet your objections. But I want to make sure I understand just what you are saying.

I can foresee the need for voluntary agreements in emergencies less severe than those implied by the threat of an attack.

If this committee were to relax these national emergency conditions, if the clean bill also limited the Justice Department and the Federal Trade Commission to anticompetitive or antitrust issues and if it included exemptions from disclosure for qualified national security information, then do you think that you could support the measure?

GENERAL BRAY. Yes, sir, I think the specific language we would want to work out with your staff, but those are the major points of disagreement. We have points which I think we would work out very well with the committee and the staff and ones which would result in our support for the other changes in the legislation.

THE CHAIRMAN. Let me see if I understand what this would mean. Let's take some examples.

During a limited war such as we fought in Korea, it seems as though voluntary agreements would be necessary, if at all, only in connection with certain specialized industries.

If, on the other hand, it became necessary to mobilize for general war, then the significance of these voluntary agreements provisions would become correspondingly much greater. Conceivably, voluntary agreements covering large and important industries, such as steel, shipbuilding, or chemical production might become desirable.

Is that the kind of thing you had in mind?

GENERAL BRAY. Yes, sir, generally, but even beyond that. I think a lot of the action that my office is charged with right now is trying to prepare our Nation for emergencies that might arise of all types. It requires that we do certain planning and be prepared to take certain actions well before an actual outbreak of war, whether it is a limited war or general war. So I think the Defense Production Act, as it is presently written, as you know, does not limit the use of title I or priorities or allocations to an actual war situation. We are using it on a day-to-day basis now.

Similarly, title III, which deals with preparing the industrial base, does not require the outbreak of war for us to prepare our base for an emergency in the future. It is in that same vein that I want to look at the voluntary agreements and the advisory committees, that we have taken the preparatory actions of establishing, having meetings, having understandings and having agreements and programs worked out and approved by the Attorney General and Federal Trade Commission beforehand, so that in the event of emergency, we do have a method for moving right into it.

I think these are simple preparedness measures, and we do include the circumstances in which you indicated above of limited war and of an all-out general war. But one in which we want to do certain preparedness actions before either such war actually breaks out. And the wording of subsection (c) in the amendment now is very limiting in the sense which imply strongly an imminent danger or imminent attack before we would even begin this sort of planning process.

I really am talking about preparedness planning, having a mechanism in being, as opposed to waiting until that time to begin this sort of action.

D.3 EXCERPT FROM COMMITTEE REPORT ON DPA AMENDMENTS

The provisions of the substitute S. 1537 also reflect testimony given in hearings before the Senate Banking Committee, specifically:

a. the suggestions made by General Leslie Bray, Jr., Director of Preparedness and the official chiefly responsible for carrying out the provisions of the Defense Production Act that:

(1) the restrictive language relating to circumstances when voluntary agreements may be requested should be relaxed;

(2) provision be made for exempting from disclosure meetings and documents which may involve classified national defense information; and

(3) the Attorney General and the Federal Trade Commission be confined to comment on the anticompetitive and antitrust aspects of voluntary agreements and not to the substantive questions of whether voluntary agreements are the best method for solving the problems which give rise to them...

Certain specific provisions of the amendments to the Defense Production Act may require explanation of the Committee's intent.

Subsection (c)(1) of the amended Section 708 seeks to relate the need for voluntary agreements more explicitly to the purposes of the Defense Production Act. The existing language of the Act merely states that voluntary agreements may be developed "to further the objectives of this Act." The Committee's intent in expanding on this language is to emphasize that any voluntary agreements authorized under the Act should be able to demonstrate a clear relation to the Act's general objective of providing for ongoing and standby programs aimed at preparing an adequate industrial base against the contingency of war. In this connection, the use of the term "mobilization" is not limiting. It does not require a formal mobilization in the technical sense of the term. Rather, it is used here to connote those activities which may be deemed appropriate to prepare for or to engage in military actions...

The Committee amended S.1537 by striking everything after the enabling clause and substituting a new text. The principal changes in the substitute, as amended, are as follows:...

2. The findings upon which a request for voluntary agreements may be based have been relaxed in order to give the President the flexibility to seek voluntary agreements in emergency situations short of war or mobilization.

3. The supervisory roles of the Attorney General and the Federal Trade Commission have been confined to establishing rules and procedures and to examining the anti-competitive implications of voluntary agreements and programs, thus removing them from the substantive decisions about the agreement and programs which are more properly the province of the Federal officials designated by the President to carry out the voluntary agreement authorities conferred on him in the Act...

APPENDIX E
EXCERPTS FROM THE SMALL BUSINESS ACT

EXCERPTS FROM THE SMALL BUSINESS ACT

The Small Business Act, approved in 1953, created the Small Business Administration to succeed the Small Defense Plants Administration, originally established by 1951 DPA amendments. The Act contains two sections, reprinted below, authorizing waiver of antitrust laws for small business groups. These provisions are modeled in the original DPA Section 708.

E.1 RESEARCH AND DEVELOPMENT

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy..

E.2 VOLUNTARY AGREEMENTS AMONG SMALL-BUSINESS CONCERNS

(a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

(b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act (15 U.S.C. 41 et. seq.) of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) Delegation of authority; consultation approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

(d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

APPENDIX F
EXCERPTS FROM ATTORNEY GENERAL REPORTS ON VOLUNTARY AGREEMENTS

EXCERPTS FROM ATTORNEY GENERAL REPORTS ON VOLUNTARY AGREEMENTS

This appendix contains excerpts from two especially important Attorney General reviews of the voluntary agreements program: a May 9, 1956, review that summarized new preparedness planning program assumptions and the implications of these new assumptions for the voluntary agreements program; and the May 9, 1961, report which was one of the most comprehensive overviews of the status and success of the program.

F.1 EXCERPTS FROM 1956 REPORT

Since 18 of the 22 presently outstanding programs involve Army integration committees, this report concentrates, first, on changes in their operations aimed to promote competition as well as the mobilization concept of long-range stockpiling of industrial capacity. These amendments make possible the opening to membership on these committees of qualified prospective contractors as well as current producers of the particular military weapons and supplies. Secondly, the report describes the present scope of activities of each of these committees, and the impact which the new amendments may be expected to have upon their future operations. Current activities of all other existing voluntary agreements are, finally, briefly presented.

The present and future activities of industry integration committees operated by the Department of the Army in great measure are being determined by the development of the mobilization principles evolved in recent months. In fact, the "open-ending" of these committees is one of the basic tools designed to effectuate these principles.

Reevaluation of mobilization planning has been considered necessary by changed international conditions. To meet long-range defense plans, rather than short-range emergency needs, procurement to build up immediate reserve stockpiles of full mobilization requirements is now considered to be

impracticable. The stockpiling of adequate reserves under such condtions is almost an economic impossibility, requiring, as it does, a huge investment in materiel which inevitably becomes obsolescent as time passes. Therefore, it has been deemed essential that a realistic balance be obtained between the reserve stockpiling of military end items, and the establishment and retention of adequate industrial capacity.

This latter course involves the continuing development, establishment, modernization, and maintenance of the industrial capability of the Nation in a constant state of preparedness. Experience has shown that in many items required by the military substantial lead time is consumed in development and production even before first deliveries can be made. However, in the event of war it is conceivable that the only production which could tip the scales in favor of the United States and its allies would be that which could be immediately realized. Therefore, industrial capacity must depend upon current producers and other production facilities which can be keyed to immediate reactivation or conversion to production of particular military items in the event of emergency.

Consequently, current mobilization planning for the eventuality of a total defense effort relies principally upon a broad industrial base consisting of (1) current producers of necessary military items, who are constantly abreast of the latest technological advances; (2) "standby" or "layaway" facilities, which are production facilities held, by arrangement with private contractors, in a state of operational readiness or in storage at or near the plant site, and maintained in such a condition as will assure rapid reactivation in the event of emergency; and (3) a corps of "planned producers" whose production lines and facilities are engaged in producing civilian items, but which are keyed to rapid conversion to production of specified military items upon demand. Of course, the standby facilities and the production lines of the planned producers must also be modernized with each advance in technology and development of improved models of necessary equipment.

The 1955 amendments to the Defense Production Act reflect this alteration of viewpoint toward mobilization planning. Section 2, as now amended, states that the mobilization effort--

> requires the development of preparedness programs...in order to reduce the time required for full mobilization in the event of an attack on the United States.

This revision of basic mobilization planning has made necessary consideration of changes in the composition and organization of the Army integration committees.

We have stated at length in our report of November 9, 1955, the purpose of these committees in aiding the standardization of military equipment and the greatest efficiency of its production. The Department of Justice has always recognized potential anticompetitive posibilities stemming from operations of such committees. They consist of contractors engaged in supplying a common product to the Army. The mingling of such actual or potential competitors in the civilian economy at committee meetings amid an atmosphere of cooperation may, despite the presence of a Government chairman, give rise to later cooperative agreements or understandings applicable to civilian production. Further, the exchange of technical information and know-how relating to Army production problems may also have application to equivalent technical problems encountered in the civilian production of the members. Members of such committees, receiving this flow of gratuitous information, may well obtain a competitive advantage over others in the same civilian market who do not have Army contracts and are thus not included in the integration committees.

Despite the possibility of anticompetitive factors present in the operation of these committees, it has been clear that overriding considerations of defense necessity compelled their formation and require their continued existence. However, before giving approval, I felt it necessary to keep anticompetitive aspects of the committees to the barest minimum consistent with mobilization requirements.

Holding these views, I have in the past declined to approve suggestions from the Army to extend the area of committee-membership from current producers to standby and layaway contractors and planned producers as well. It was our view that such an extension would merely increase the possibilities of anticompetitive practices arising from this association of competitive producers without achieving any commensurate defense mobilization benefits. It was felt that the benefits to be derived from such commingling of ideas would be all one-sided, since such proposed committee members, because of absence of experience in the technical problems attendant upon current military production, would be unable to contribute to the flow of information to any appreciable extent. The Department of Justice offered no objection, however, to the distribution by the Army of information developed at committee meetings to various prospective producers on an individual basis.

The recent change of emphasis in defense mobilization planning has required a reevaluation of our views on this question. When, as formerly, the primary emphasis was upon numerous immediate contracts to effect the rapid buildup of a stockpile of weapons and supplies, there seemed to be no necessary purpose served by including members on integration

committees who were not current producers. Now, when primary emphasis is placed upon the development of a substantial base of industrial potential, capable in an emergency of swinging into immediate, swift and efficient production of the most modern models of weapons and supplies, such a conclusion appeared to be no longer valid.

Department of the Army representatives pointed out that, under the new concept of mobilization planning, to insure immediate utilitization in an emergency of standby and planned production facilities, it was essential that their users be kept abreast of all new developments in the field. In addition, because of the probable necessity under all-out emergency production for a general exchange of machine tools and components and other kinds of facilities integration, it was necessary that current producers be apprised of the limitations, difficulties, and other production problems which may be faced by such prospective producers. It was also stressed that military procurement and planning personnel required detailed knowledge of the up-to-the-minute problems of both current and prospective producers with respect to engineering changes, improved production techniques, availability of components, and other factors, in order to formulate realistic production goals upon which planned military strategy could be based.

Unless these prospective producers were admitted to the integration committees, it would be necessary to convey the interchange of ideas and problems on a limited basis through the circuitous medium of correspondence to and from Army officials. It has been the Army's experience, in light of previous integration committee activity, that it is not only cumbersome but often impossible to maintain an exchange of intelligence, with complete recognition of all the technical factors involved, by means of unilateral action, writings, and subsequent communication to all parties by the Government.

Army officials believe that once an emergency has developed it will be absolutely essential to the war effort to have such committees in operation, encompassing the broadest possible number of applicable producers. Because of the cutback in current procurement, several of th present committees were so reduced in membership that they might have gone out of existence, or been disapproved, under the former rules for voluntary agreements. Army experience has demonstrated that a considerable period of time is consumed both in the establishment and the expansion of such committees. Therefore, it was felt that the same reasons exist for maintaining these committees in operational status, and with as great a membership as possible before the emergency, as would apply to having the industrial potential ready in order to avoid prolonged production delays.

This reasoning impressed me, and I concluded that under the altered concept of mobilization planning the expansion, or "open-ending," of Army integration committees served a useful and necessary purpose in the interests of national defense. Furthermore, the 1955 amendments to the Defense Production Act seem to warrant this conclusion. Section 708 (b) now authorizes the exchange of technical information, pursuant to approved voluntary agreements, between "actual or prospective contractors." This provision appears specifically to authorize the inclusion as members of integration committees of standby and layaway contractors, as well as planned producers.

I concluded that the present defense necessity for such "open-ending" outweighed the antitrust implications in these enlarged committees. Indeed, the agreement to open up these committees to all willing prospective producers, within reasonable limits, to a great extent minimizes the former antitrust objection that participation in the flow of information at meetings gave members a possible competitive advantage over nonmembers in the same civilian industry.

It should also be pointed out that, in the present state of procurement, the enlargement of integration committees to include planned producers should actually have a salutary effect on competition. As mobilization policy has changed to a long-range stockpiling of productive capacity, it has been accompanied by a reduction in current procurement. Therefore, it is believed that the enlargement of the number of contractors possessing up-to-the-minute facilities, technical information and know-how to produce efficiently the items the Army wants will lead to a greater amount of competitive rivalry to obtain slices of this shrinking pie. The Government will ultimately be the beneficiary of lower prices for the military items it wants to procure.

Having agreed to the open-ending of these Army integration committees, I directed my staff to devise procedures, in consultation with Army representatives, to achieve the desired objective, while still assuring proper antitrust safeguards. It was agreed that the reconstructed committees should include current contractors and those recently producing contractors who have been eliminated from current work because of the cutback in current procurement. They should also include contractors holding existing Army contracts for the establishment or maintenance of standby or layaway facilities.

With respect to planned producers, it was felt that the ideal situation would be for all of such producers to participate in the exchange of ideas taking place in these committee meetings. However, it was believed that this would be impossible, for two reasons. First, some of these producers would

not be willing to exert the continuing effort nor incur the expenses required for participation in such activities without the foreseeable prospect of financial return. And, secondly, there is a practical limit to the size of these committees, beyond which they become inefficient or even totally unworkable. In a number of the committees, it is believed that the inclusion of all planned producers would produce this result. Nevertheless, it was decided to reconstitute the integration committees in such a manner as to approximate this desired goal insofar as possible.

It was also agreed that, even with this aim in mind, it was not desirable to throw open the membership in committees to any and all members of an industry. Certain obvious, prudent limitations were incorporated. First, military security dictated the restriction of some production information to persons of established integrity. Second, a prospective member must be capable, with respect to plant equipment and financial resources, of meeting its mobilization commitments. And, third, a prospective member must have in being the management and technical ability, and have available the adequate reserve or source of manpower with appropriate abilities and skills, which are required for efficient production. Within these limitations, any member of an industry represented by members of an integration committee may seek membership thereon. To insure such compliance, the refusal to permit an applicant to become a member must be explained satisfactorily in writing by the Army.

The amendments to these various voluntary agreements, as finally formulated, take 2 basic forms, applicable respectively to the 2 principal types of integration committees. The first relates to the type of committee in which the members are contractors or prospective contractors for military items bearing a close relation to their civilian production, and to be produced in plants owned, at least in part, by the contractors. The second is directed to the operators of "Government-owned, contractor-operated" plants. The difficulty in the latter type stemmed from the variety of contractors engaged in this operation. They are seldom engaged in competitive civilian production and have little community of technical interest outside of their Government contracts. The obvious difficulty of defining a "prospective contractor" in terms of "Government-owned, contractor-operated" plant contracts led to the omission of the phase in the applicable amendment. Instead, the prospective membership is expanded to include subcontractors, standby and layaway contractors.

The Army is still engaged in the extensive paperwork involved in acquainting present members of integration committees with these amendments, and in determining the "prospective

producers" who will be requested to participate. This reconstruction of the integration committees has, therefore, taken up much of the available time in the past month or two, and interrupted to a considerable extent the constructive defense activities of these committees. However, it is not expected that this transition period will be of much longer duration.

F.2 EXCERPTS FROM 1961 REPORT

I. Introduction

Sudden conversion from a peacetime economy to a war footing inevitably brings enormous problems to Government and industry. Peacetime procedures in procurement of equipment and development of new weapons are geared for slower and smaller outputs. Normal business patterns, production techniques, and proprietary rights prove too restrictive for emergency conditions. All barriers must be broken and all efforts devoted intensively to expansion of industrial capacity and efficiency to meet the heavy and immediate demands for every conceivable kind of war materiel.

Emergency psychology thus runs squarely against the basic concepts of our free enterprise economic system. The keystone of that system is competition among industrial elements by unfettered individual action of each company. But in defense emergency the exigencies of the moment demand minor emphasis on private competition and an all-out joint effort by all units capable of contributing to the common goal.

The outbreak of Korean hostilities proved no exception to this pattern. As in previous defense emergencies, mobilization efforts had to overcome shortages of raw materials, machine tools, and other conversion problems. Priorities and allocations were necessary to bring about orderly scheduling of production from raw materials through intermediate components to finished products. While traditional suppliers expanded facilities, peripheral companies had to be channeled into appropriate defense production. A smooth and steady flow of war materiel often required shifting of successive stages of production from one plant to another as raw materials, production lines, or new facilities became available. In their defense work, various industry units had to be operated in tandem as one industrial complex.

Such scattered operations required a considerable degree of standardization of production processes among the many firms involved. In addition, the Government was faced with the need for technical advice in preparing product specifications to achieve the desired uniformity in equipment. For maximum

efficiency proprietary data, technological know-how, production experience, and all relevant information on improved models had to be pooled among all producers in the particular fields. The exigencies of immediate mobilization inevitably made necessary a high degree of cooperative effort among Government agencies and industrial units.

In former emergencies such cooperation had developed through lose and informal committees of Government contractors acting with little supervision in conjunction with the defense agencies involved. This joint action by firms, otherwise business competitors, created opportunities for anticompetitive abuses with serious consequences for our free enterprise economic system. Indeed, some of these arrangements were subsequently subject to antitrust attack.

In the Korean emergency an effort was made to strike a balance between all-out joint emergency action and our traditional commitment to individual competition. By statute, these necessary collaborative arrangements were formalized and controlled. The basic emergency legislation, the Defense Production Act of 1950, included a provision specifically authorizing formation by companies of voluntary agreements. Under these, committees could be established to carry out Government-sponsored cooperative programs in aid of the defense effort. Recognizing the reluctance of many firms to participate for fear of possible antitrust entanglements, the act exempted from the antitrust laws actions taken under such agreements which had received the prior approval of the Attorney General. While affording a measure of protection to business firms, this insured that the Attorney General could so shape the conditions of cooperative action as to minimize possible dangers to the free competitive economy.

This statutory mandate of section 708 of the act was interpreted by successive Attorneys General as not to require independent evaluation of the defense necessity of proposed agreements. Assuming the degree of necessity asserted by defense agencies, approval was conditioned on incorporation of operational safeguards to reduce to the extent practicable any competitive dangers...

II. Army Integration Committees

The Department of the Army is sponsor of five active integration committees. Most of these relate to the activities of the Ordnance Corps, with three under the supervision of Ordnance Ammunition Command and one under the Ordnance Tank-Automotive Command. Army Signal Corps sponsors one relating to quartz crystal production.

A. Ordnance Ammunition Command Committees

This command, primarily responsible for ammunition supply, supervises the operation of the Government arsenals and purchases ammunition items from private producers. It has been an active sponsor of integration committees, of which three are still active. These are the committees on Ammunition Loading (Except Small Arms); Propellants and Explosives; and Small Arms Ammunition.

1. Ammunition Loading (Except Small Arms)

This committee was formed primarily to integrate operations in Government arsenals relating to ammunition other than that used for small arms. These arsenals, Government-owned but operated by private companies under cost-plus-fixed-fee contracts, assemble and package a wide range of explosive or incendiary shells, bombs, rockets, missile motors, grenades, as well as ammunition components.

Committee members were drawn from the contract operators of the Government-owned arsenals. The work of the group has been largely addressed to coordinating the arsenal operations on the present diminished scale, to eliminate inefficiency and loss of time in expanding to full output in event of emergency. Safety in processing and handling, and maximum effectiveness of the product, require that the process of filling ammunition casings achieve uniform loads without cavities or cracks. Lack of a standardized equipment listing was apparently an obstacle to operation and repair of arsenal machinery, entailing duplication of engineering effort and parts stocks.

To coordinate the efforts of the arsenals, this Committee was established in 1953, with the approval of the Attorney General.

Committee members are as follows:

Members	Arsenal operated
National Gypsum Co.	Kansas Ordnance Plant, Parsons, Kans.
Mason Hanger--Silas Mason Co., Inc.	Cornhusker Ordnance Plant, Grand Island, Nebr.
	Iowa Ordnance Plant, Burlington, Iowa
Goodyear Engineering Corp.	Indiana Arsenal, Charlestown, Ind.
Harvey Aluminum Sales	Milan Arsenal, Milan, Tenn.
A.S.R. Products Corp., Kingsbury Corp.	Kingsbury Ordnance Plant, La Porte, Ind.
Day and Zimmerman, Inc.	Lone Star Ordnance Plant, Texarkana, Tex.
The Procter & Gamble Defense Corp.	Milan Arsenal, Milan, Tenn.
Ravenna Arsenal, Inc.	Ravenna Arsenal, Ravenna, Ohio
Sperry Rand Corp.	Louisiana Ordnance Plant, Shreveport, La.

The main committee has held four meetings, the last in 1956. However, the bulk of its activities are carried on through various subcommittees. Principal subcommittees, one on maintenance and one on production, still remain active.

It is apparent that this committee has served a useful function. The sponsor cites savings of substantial sums, including approximately $1.5 million saved from the standardized equipment listing. It reports substantial increases in efficiency and elimination of unsafe operations and conditions.

Against this is to be weighed the possible anticompetitive results of committee operation. These appear to be minimal, largely because the members are, in this aspect, primarily a group of Government managers working on problems of the Government plants.

Participation in committee activities is directed to maximum efficient operation of Government-owned plants the function of which bears little relation to the civilian enterprises of the contractors. Moreover, they do not represent any distinct industry in their commercial operations.

While, therefore, the defense utility of this committee appears to be more a matter of convenience than urgent necessity, it is apparent that there is little or no probability of anticompetitive results from its operation.

I, therefore, approve continuance of this activity.

2. Propellants and Explosives

The chemical compounds used as propellants and explosives in bombs, projectiles, and shells are manufactured almost entirely in Government arsenals, operated by contractors on a cost-plus-fixed fee basis. As with ammunition-loading facilities, it was deemed necessary to integrate the knowledge and experience of the various operators in producing, packaging, and shipping these dangerous materials. Coordinated operations would promote economy in production and administrative methods, best use of improved machinery, and uniform adoption of maximum safety procedures.

The committee was established in 1953 with the approval of the Attorney General. Original membership was comprised of operators of the various Government arsenals. Two companies which later relinquished their management contracts were retained as committee members to obtain the benefits of their experience. In addition, when solid and liquid fuel rocket propulsion became increasingly important, three research and development contractors for the Government in this field were added to the committee. Its present membership is as follows:

Members	Arsenal operated
Liberty Powder Defense Corp.	Badger Ordnance Works, Baraboo, Wis. Wabash River Ordnance Works, Newport, Ind. Indiana Arsenal, Charlestown, Ind. Alabama Ordnance Works, Childersburg, Ala.
E.I. du Pont de Nemours & Co.	Indiana Ordnance Works (Plant No. 1), Charlestown, Ind.
Goodyear Engineering Corp.	Indiana Arsenal, Charlestown, Ind.
Thiokol Chemical Corp.	Longhorn Ordnance Works, Marshall, Tex.
Hercules Powder Co.	Radford Arsenal, Radford, Va. Sunflower Ordnance Works, De Soto, Kans.
U.S. Rubber Co.	Joliet Arsenal (Kankakee Unit), Joliet, Ill.
Holston Defense Corp.	Holston Ordnance Works, Kingsport, Tenn.
Atlas Powder Co.	Volunteer Ordnance Works, Chattanooga, Tenn.
Atlantic Research Corp.	None
Aerojet General Corp.	None
Grand Central Rocket Co.	None

In addition to process improvements and development engineering projects the Committee and its five subcommittees have aided in introduction of safety features and improvements in waste control. It has developed automated equipment with remote controls for personnel protection, and devised techniques to handle explosives in reduced concentrations on the production line. It has worked at developing safe methods of disposal of toxic and nontoxic byproducts of manufacture to avoid contaminating streams, soil, or the air.

In recent years production has been reduced, with several plants placed on a standby status. Under these conditions increased emphasis has been given by the Committee to mobilization maintenance planning and storage of stocks. Curtailment of demand came at a time when large stocks of supplies were already packaged for shipment. Storage plans were devised permitting periodic inspection with a minimum of rearrangement and repackaging. It is estimated that some $7 million was saved by this effort. In mobilization planning, an order of priority for plant reactivation has been worked out, based on degree of immediate emergency need, and the limited funds available for maintenance have been allocated accordingly.

As with ammunition loading, this Committee is basically an organization of Government plant managers, meeting from time to time to coordinate, improve, and standardize operations of the various Government arsenals. In such a highly dangerous field, with very little specifically applicable commercial experience to draw upon, such efforts seem particularly desirable.

As against these benefits, however, the anticompetitive potential of this Committee is somewhat more than minimal. Unlike the ammunition loading Committee, there is a considerable amount of similar industrial background in company membership. Though most of the companies are highly diversified, Du Pont, Hercules, Atlas, and Olin are all important producers of various kinds of explosives used in the civilian economy. Olin, Du Pont, and Eastman Kodak have a community of interests in the chemical field, while Goodyear, Thiokol, and U.S. Rubber are all involved in rubber production. However, the work of the Committee does not touch, other than indirectly, upon specific areas of these activities. Nor does our study indicate its use as a forum for discussion of common problems in these related fields.

While the committee's actions obviously warrant careful surveillance in the future, the unique position of these arsenals as virtually sole sources of vitally needed military explosive, together with the demonstrated desirability of committee coordination of productive and maintenance operations, would seem to overcome any immediate anticompetitive problems. Accordingly, I have given my approval to continuance of this committee.

3. Small Arms Ammunition

In an emergency ammunition for rifles and other small arms is urgently required in enormous quantities. Production rates must be high and continuous, under very exacting specifications. However, production is highly complex, often requiring nearly 100 different operations. These necessarily involve a rapid wasting of machinery and tools. During Korea, for example, all-out emergency operation of three Government arsenals used up over 230,000 machine parts per month. Required use of dies and other portable tools and equipment wears them out at a similar rate. Accordingly, smooth and rapid operations, without breakdowns, involve the need for heavy inventories of sturdy, exactingly machined spare parts and tools.

Packaging also presents peculiar problems. Such ammunition must be immediately available when needed at any point. This requires a buildup of large stocks in areas all over the world. Stocks must be capable of storage for long periods

without deterioration, under any climatic or other conditions in the area. In these circumstances the development and use of proper packaging is of primary importance.

As the Korean buildup began, about 85 percent of military requirements was met by production from four Government arsenals. The remainder was procured from the only manufacturers with expertise in this field, the three companies engaged in the limited field of sporting ammunition. Three of the Government arsenals were operated by these companies on a contractual basis. Coordination was necessary to standardize output and processes, to obtain interchangeability of machine parts and tools, and to disseminate data on production improvements and changes in processes and machines required for adaptation to production of new designs or calibers. Accordingly, organization of an integration committee for these purposes was approved by the Attorney General in 1951.

In addition to officials of the Government-operated Frankford Arsenal at Philadelphia, the Committee includes Remington Arms Co., operator of the Lake City Arsenal, Independence, Mo.; United States Defense Corp., operator of the St. Louis Ordnance Plant, St. Louis, Mo.; Federal Cartridge Corp., operator of the Twin Cities Arsenal, Minneapolis, Minn.; Olin Mathieson Chemical Corp. and its two small arms manufacturing subsidiaries, Western Cartridge Co., and Winchester Repeating Arms Co. Also on the Committee, assisting in solution of problems on tooling and other parts are the following metal parts producers:

The American Brass Co.: Controlled by Anaconda Co., one of the largest copper producers, engaged in the mining, milling, smelting, and refining of nonferrous metal ores.

Chase Brass & Copper Co., Inc.: Controlled by Kennecott Copper Corp., another large copper producer engaged in activities similar to those above.

The International Silver Co.: Manufacturer of a complete line of sterling and plated silverware and of stainless steel tableware.

McQuay-Norris Manufacturing Co.: Engaged principally in the manufacture and sale of engine and chassis parts for automobiles, trucks, tractors, outboard motors, power lawnmowers, and industrial engines.

The Plume & Atwood Manufacturing Co.: Manufactures brass, bronze, nickel, and silver mill products.

Revere Copper & Brass, Inc.: Engaged in the manufacture of a varied line of products composed of copper, brass, bronze, aluminum, nickel, silver, lead, steel, and various alloys.

Scovill Manufacturing Co.: Engaged in the melting, casting, and processing of brass and other nonferrous metals and their alloys. It manufactures from these and other materials a wide diversity of products.

Activities of the Committee have emphasized standardization of tools and raw materials and development of methods to control and reduce necessary inventories of machine parts. Study of dies and other perishable tools led to improved tooling design which decreased costs and improved performance. The standardization achieved made possible the interchangeability of tools among ammunition plants when needed in emergency. Standardization in dimensions of basic metal strip stock, from which important components of cartridge cases are made, was also achieved by the Committee.

In inventory control the Committee established a comprehensive system for control of spare parts. In part, this involved development of pictorial index catalogs enabling production workers to identify accurately each of the many spare parts used. It also included development of a uniform part-numbering system for machine parts which superseded the individual designations of various machinery producers. This eliminated considerable duplication in plant inventories and provided accurate identification for interchangeability among plants. It is estimated that inventory reductions resulting from Committee efforts saved the Government about $3.6 million.

In recent years developments in small arms have reflected the transition from the all-out emergency status of the Korean period to slower paced long-term mobilization planning. Emphasis in present reduced demand has shifted toward much greater procurement from private commercial plants. Of current annual procurement of $70 million in small arms ammunition some $34 million is procured from Federal, Remington, and the Olin Mathieson subsidiaries. Two contractor-operated arsenals have been placed in standby status, and the Government-operated Frankford Arsenal has devoted its ammunition facilities primarily to development and pilot plant work on the new 7.62-millimeter caliber ammunition designated as standard equipment for all NATO ground forces.

Work on NATO arms and ammunition is now reaching the production state. Therefore, the current emphasis in Committee activities is on assisting in conversion of present equipment and tooling for .30 caliber ammunition to use in manufacture of 7.62-millimeter NATO ammunition. Through a primer subcommittee it has also aided in development work on a new percussion-type primer for this new caliber.

Unquestionably, ammunition is a vital part of security, and exact standardization of cartridges to provide both dimensional and ballistic uniformity and interchangeability is highly important. The work of this Committee has made contributions to the solution of serious production problems involved in standardization of military weapons for NATO, and to the basic

problem of producing cheaply and quickly the wide variety of small arms ammunition for U.S. forces. Though the military's own work at Frankford Arsenal has been an effective pilot plant operation acquainting Government personnel with production problems, some problems of industry coordination and standardization could not have been solved without this group. The sponsors of this Committee and OCDM strongly represent that, because of these benefits, this Committee is to be regarded as essential to security.

On the other side of the balances are clear dangers to competition. The companies involved and the industry have long been subject to serious antitrust question. The commercial ammunition field itself is highly concentrated, with only two company groups -- DuPont and Olin Mathieson -- as the major factors. Military ammunition concededly may involve different calibers, styles, and performance characteristics, but production processes and techniques, tooling and equipment problems, and specification development are common to both military and commercial work. Raw material and metal parts suppliers on the Committee also have commercial relations with the ammunition producers. Further, the potential for commercial considerations entering Committee discussions are enhanced with the shift toward private manufacture of Government requirements. At one time it could be said that the Committee was primarily a group of Government plant managers but this is decreasingly true. Efforts in coordinating, standardizing, and improving now largely involve consideration of plant operations of private competitors. Since about half the production of the ammunition makers is devoted to this Government business, disclosure of private operations is inevitable.

Although no complaints have arisen with respect to committee operations, its potential as a basis for stabilizing commercial operations through interchange of company information is very great, even without overt understandings. However, it is the immediate concept of the statute authorizing these committees that, where defense importance is concerned, some risks may be taken. Therefore, I hesitate now to override the recommendations of defense agencies for continuance of this committee effort in a vital defense area. However, while its continuance is approved, continuing and careful study will be made of its operations.

B. Ordnance Tank Automotive Command Committee

This command has primary responsibility for procurement, research and development of all types of tanks and tactical vehicles. Such equipment is privately produced. This command has been the sponsor of six integration committees, of which only the Cast Armor for Track-Laying Type Vehicles is now active.

Cast Armor for Track-Laying Type Vehicles

This Committee was formed to provide for interchange of technical experience of foundries producing cast armor for tanks and other armored vehicles. Use of casting for production of armor permits greater flexibility in design using more effective deflection contours in lieu of greater material thickness and weight. Castings of the size and type required, however, can be produced only by the heavy casting producers of the country. Armor casting varied substantially from foundry to foundry reflecting different approaches to the technical problems encountered, and standardization of techniques and materials was a major need.

This Committee was established in 1952 to meet this need. Seven members, major heavy casting founders, originally made up the Committee. The eight present members are as follows:

American Steel Foundries -- Manufactures and sells basic parts for railway cars and locomotives. (Action is in process to discontinue membership.)

Blaw-Knox Co., Foundry & Mill Machinery Division -- Manufactures a variety of equipment for metal fabrication.

General Steel Castings -- Furnishes railroad equipment manufacturers with special types of steel.

Universal Marion Corp., Scullin Steel Division -- Parent corporation manufacturer of power shovels, draglines, etc., Scullin Steel Division manufacturer of open hearth steel castings, bolsters, coupler yokes, and side frames for freight cars.

Textron, Pittsburgh Steel Foundry Division -- Parent corporation is a diversified manufacturing concern with a wide range of industrial and consumer products. Division produces steel castings and heavy machinery for the steel industry, valve manufacturers, and railroads.

Birdsboro Corp. -- Manufacturer of steel castings. steel mill equipment, hydraulic presses, crushing machinery, steel rolls and porcelain enamel-clad building panels.

Buckeye Steel Castings -- Manufacturer of steel car couplers, truck and body bolsters, truck frames, yokes, etc., for railroad car equipment.

Superior Steel & Malleable Castings Co. -- Goodman Manufacturing Co. owns 60 percent of this concern. Goodman Manufacturing Co. manufactures mining machinery, including continuous borers, coal cutters and loading machines, conveyors, shuttle cars and locomotives. Other products include rock and gravel crushing and handling machinery, "Conway" shovel (a mucking machine for tunneling), and auxiliary machinery for brass and steel mills. (Action is in process to discontinue membership.)

The committee has held seven meetings, the last in October 1960. At these meetings information was exchanged among members on new equipment and technical advances which have contributed to improved quality and increased production potential. This casting know-how has been made available to the Ordnance Corps. The committee's recommendations, such as elimination of homogenization of casting and reduction of steps in the tempering process, substantially increased capacity without adding to existing foundry equipment. Other recommendations conserved nickel content, improved armor quality, and reduced vehicle weight. The committee serves as a channel through which the industry is kept advised of current ordnance planning and change in vehicle requirements and design.

The committee has thus served a useful defense function, improving quality, increasing capabilities and conserving resources. Against this must be weighed possible anticompetitive results of its operations. The committee comprises almost all of the heavy casting industry in the country. Their commercial products utilize comparable production techniques, and there has been in the past a number of antitrust enforcement actions involving companies in this industry. There has been, however, no immediate indication or complaint of collusion either in Government procurement or in civilian markets arising in connection with this committee's operations.

The sponsors of this Committee, with the concurrence of OCDM, represent its existence as urgent because of possible capacity shortage in future emergency requirements. On balance, this Department holds the view that defense benefit outweighs dangers to competition, and I therefore approve its continuance...

APPENDIX G
CREDIT RESTRAINT COMMITTEE DOCUMENTS

VOLUNTARY CREDIT RESTRAINT COMMITTEE DOCUMENTS

The Voluntary Credit Restraint Program was one of the more interesting experiments in industry self-regulation since World War I. (See Section 4.2 for a discussion of this program.) This appendix reprints the program's chartering document, six bulletins issued by the committee, and one set of recommendations. These documents provided guidance to financial institutions on lending criteria to support the mobilization program.

G.1 DOCUMENT ESTABLISHING PROGRAM

Preamble -- The task of restraining strong inflationary pressures is one of the most difficult and most important in the whole range of economic problems today.

One part of this task -- the restraint of unnecessary credit expansion -- presents a challenge to the financing institutions throughout the nation.

Section 708 of the Defense Production Act of 1950 authorizes the President to encourage financing institutions to enter into voluntary agreements and programs to restrain credit, which will further the objectives of that Act. By executive order, the President has delegated to the Board of Governors of the Federal Reserve System his authority with respect to financing under this section of the Act upon the required condition that it consult with the Attorney General and with the Chairman of the Federal Trade Commission, and that it obtain the approval of the Attorney General before requesting actions under such voluntary agreements and programs.

At the invitation of the Board, and in company with it, representatives of the American Bankers Association, the Life Insurance Association of America and the Investment Bankers Association of America have been examining the possibilities of this method of credit restraint.

While it is recognized that the proposed Program is addressed only to one limited source of inflationary pressure, the vital importance of this problem to the stability of the economy, and the necessity to extend credit only in such a way as to restrain inflationary pressures outside the financing of the Defense Program should be emphasized to all financing institutions.

It is appropriate to point out that this Program of voluntary credit restraint does not have to do with such factors as inflationary lending by federal agencies, unnecessary spending, federal, state or local, and the wage-price spiral and other much more seriously contributing factors. These should be vigorously dealt with at the proper places. It assumes that the proper governmental authorities will exercise the requisite fiscal and monetary controls.

Definitions -- As used herein:

The terms "financing institution" or "financing institutions" mean banks, life insurance companies, investment bankers engaged in the underwriting, distribution, dealing or participating, as agents or otherwise, in the offering, purchase or sale of securities, and such other types or groups of financial institutions as the Board of Governors of the Federal Reserve System may invite to participate in the Program.

The terms "loan," "loans," "lending," and "credit," in addition to their ordinary connotations, mean the supplying of funds through the underwriting and distribution of securities (either on a firm commitment, agency or "best efforts" basis), the making or assisting in the making of direct placements, or otherwise participating in the offering or distribution of securities.

Statement of Principles -- Pursuant to the provisions of Section 708(a) of the Defense Production Act of 1950, and with the approval of the Board of Governors of the Federal Reserve System in accordance with the functions delegated to it by Section 701(a)(2) of Executive Order 10161, this Statement of Principles has been drafted to which all financing institutions are asked to conform.

It shall be the purpose of financing institutions to extend credit in such a way as to help maintain and increase the strength of the domestic economy through the restraint of inflationary tendencies and at the same time to help finance the defense program and the essential needs of agriculture, industry and commerce.

Inflation may be defined as a condition in which the effective demand for goods and services exceeds the available supply, thus exerting an upward pressure on prices.

Any increase in lending at a more rapid rate than production can be increased exerts an inflationary influence. Under present conditions of very high employment of labor, materials and equipment, the extension of loans to finance increased output will have an initial inflationary effect; but loans which ultimately result in a commensurate increase in production of an essential nature are not inflationary in the long run whatever their temporary effect may be. It is most important, however, that loans for nonessential purposes be curtailed in order to release some of the nation's resources for expansion in more vital areas of production.

Cooperation with this program of credit restraint makes it increasingly necessary for financing institutions to screen loan applications on the basis of their purpose, in addition to the usual tests of credit worthiness. The criterion for sound lending in a period of inflationary danger boils down to the following: Does it commensurately increase or maintain production, processing and distribution of essential goods and services?

In interpretation of the foregoing, the following types of loans would be classified as proper:

1. Loans for defense production, direct or indirect, including fuel, power and transportation.

2. Loans for the production, processing and orderly distribution of agricultural and other staple products, including export and import as well as domestic, and of goods and services supplying the essential day-to-day needs of the country.

3. Loans to augment working capital where higher wages and prices of materials make such loans necessary to sustain essential production, processing or distribution services.

4. Loans to securities dealers in the normal conduct of their business or to them or others incidental to the flotation and distribution of securities where the money is being raised for any of the foregoing purposes.

This Program would not seek to restrict loans guaranteed or insured, or authorized as to purpose by a Government agency, on the theory that they should be restricted, in accordance with national policy, at the source of guaranty or authorization. Financing institutions would not be restricted in honoring previous commitments.

The following are types of loans which in general financing institutions should not make under present conditions, unless modified by the circumstances of the particular loan so as not to be inconsistent with the principles of the program:

1. Loans to retire or acquire corporate equities in the hands of the public, including loans for the acquisition of existing companies or plants where no overall increase of production would result.

2. Loans for speculative investments or purchases. The first test of speculation is whether the purchase is for any purpose other than use or distribution in the normal course of the borrower's business. The second test is whether the amounts involved are disproportionate to the borrower's normal business operations. This would include speculative expansion of real estate holdings or plant facilities as well as speculative accumulation of inventories in expectation of resale instead of use.

The foregoing principles should be applied in screening as to purpose on all loans on securities whether or not covered by Regulations U or T.

Recognizing that the maximum estimate of the percentage of our 1951 production which will be devoted directly or indirectly to national defense is between 20 percent and 30 percent, a very substantial proportion of the lending of the country will be devoted to the financing of the production and growth of our industrial and commercial community. In these circumstances, it is felt that each financing institution can help accomplish the objectives outlined above by careful screening of each application for credit extension.

In carrying out such screening, financing institutions should not only observe the letter of the existing regulations of the Board of Governors of the Federal Reserve System with respect to real estate credit, consumer credit, security loans, etc., but should also apply to all their lending the spirit of these and such other regulations and guiding principles as the Government may from time to time announce in the fight against inflation.

This Program is necessarily very general in nature. It is a voluntary Program to aid in the overall efforts to restrain inflation. To be helpful, this Program must rely on the good will of all financing institutions and the overall intention to comply with its spirit.

Prodedure for Implementing the Program -- Pursuant to the provisions of Section 708(b) and (c) of the Defense Production Act of 1950, and upon full compliance with the terms and conditions thereof:

1. A "Voluntary Credit Restraint Committee" (hereinafter referred to as "the Committee") will be appointed by the Board of Governors of the Federal Reserve System (hereinafter referred to as "the Board"). Members shall be appointed for such terms as the Board may prescribe. Initially, the Committee will consist of twelve members, four representing the life insurance companies, four representing the investment bankers, and four representing the banks. The membership of the Committee may from time to time be expanded as deemed advisable or appropriate by the Board to insure adequate representation thereon of other types or groups of financing institutions which may participate in the Program. In selecting and appointing the members of the Committee, the Board shall have due regard to fair representation thereon for small, for medium and for large financing institutions, and for different geographical areas. The Committee will:

(a) With such assistance from the Board and the Federal Reserve Banks as may be necessary, distribute this statement of the Program, including the Statement of Principles, to financing institutions to such extent as may be deemed desirable in view of any distribution previously made;

(b) Appoint the subcommittees referred to below in 2;

(c) Meet for the purpose of considering the functioning of the Program, advising the Board with respect thereto, and suggesting for the consideration of the Board such changes in the Program, including the Statement of Principles, as may from time to time appear appropriate. Meetings of the Committee shall be held at the call of an official of the Federal Reserve System, designated by the Board; shall be under the chairmanship of such an official; and an agenda for such meetings shall be prepared by such an official. Full and complete minutes of each meeting shall be made by such an official and copies shall be kept in the files of the Board available for public inspection.

2. Subcommittees may be established for each type of financing institution participating in the Program. One of the members of each subcommittee located in any city in which there is a Federal Reserve Bank or branch thereof will be a Federal Reserve representative designated by the Board of Governors of the Federal Reserve System or by such Federal Reserve Bank or branch; and such member shall attend each meeting of the subcommittee. For the investment bankers, the life insurance companies, and the banks there may in each case be one or more subcommittees organized. All such subcommittees will meet only for the purposes specified in the Program; will maintain records of their actions; and will make reports directly to the Committee regarding the actions taken by them, including statements of the types of cases considered and the nature of

the advice given. The subcommittees will be available for consultation with individual financing institutions to assist them in determining the application of the Statement of Principles with respect to specific loans for which application has been made to such financing institutions. In consulting with a subcommittee, a financing institution shall not be required to disclose the identity of the applicant for any loan. No financing institution shall be required to consult with any subcommittee with respect to any loan or loans, or any application or applications therefor. Consultation with a subcommittee shall be wholly within the individual and independent discretion of a financing institution. The final decision with respect to making or refusing to make any particular loan or loans shall likewise remain wholly within the individual and independent discretion of each financing institution, whether or not it has consulted with any of the subcommittees.

In setting up the subcommittees, the Committee shall have due regard for fair representation thereon for small, for medium and for large financing institutions, and for different geographical areas. It shall also inform the Board of all subcommittee appointments.

3. The Committee shall be furnished with such compilations of statistical data on extension of credit by financing institutions as may be required to show the amounts and direction of credit use and to watch the operation of the Program. Such statistics shall be compiled by the Board. To assist the Board in making such compilations, data shall be supplied for the investment bankers, jointly by the Investment Bankers Association and the National Association of Securities Dealers, and for the life insurance companies, jointly by the Life Insurance Association of America and the American Life Convention. Compilations of data made by the Board shall not reveal the identity of individual financing institutions or borrowers. Such compilations shall be kept on file with the Board and shall be available for public inspection.

4. Financing institutions participating in the Program will keep records of individual loans, as to purpose, in such form as to be available for future analysis.

5. Any change in the Program, including the Statement of Principles, shall be passed upon by the Committee and shall be made in accordance with the requirements of Section 708 of the Defense Production Act of 1950.

All actions pursuant to and under the Program will be automatically terminated by all participating financing institutions as of the termination of the authority conferred

under Section 708 of the Defense Production Act of 1950; or upon withdrawal by the Board of its request for action under the Program. If the Committee, after study of the operation of the Program, concludes that it is no longer necessary or is not making a substantial contribution to the solution of the problem for which the Program was established, it shall so advise the Board.

G.2 BULLETIN NUMBER 1 OF VOLUNTARY CREDIT RESTRAINT COMMITTEE

The Voluntary Credit Restraint Committee at its meeting on March 14 and 15 in Washington gave consideration to the functioning of the Program as developed by the financing institutions and approved by the appropriate Government agencies.

Regional committees are in the process of formation to be available for consultation by lenders who have specific questions on the application of the Credit Restraint Program.

The Committee recognizes that there are many inflationary influences at work. The Committee expects to issue further bulletins from time to time on various phases of the Voluntary Credit Restraint Program. This bulletin deals with the matter of inventory financing.

Inventories in the United States, particularly at wholesale and retail establishments, are at peak levels even after allowance is made for the sharp increase in prices at which inventories are carried. An important part of this abnormal increase in inventories has been financed by borrowed money.

Excess inventory accumulation has already contributed directly to the rise of wholesale and retail prices beyond any level justified by the supply situation. It obviously has created undue competition in scarce materials.

In the light of the above, the Voluntary Credit Restraint Committee expressed the hope that all financing institutions would, in carrying out the terms of the Program:

(1) Refrain from financing inventory increases above normal levels relative to sales, or reasonable requirements by other conservative yardsticks.

(2) Encourage borrowers who already have excess inventories to bring these commitments and inventory positions in line as promptly as is reasonably practical, thereby reducing the amount of credit being used in this manner.

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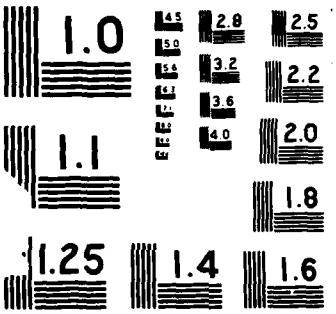
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G.3 BULLETIN NUMBER 2 OF THE VOLUNTARY CREDIT RESTRAINT COMMITTEE -- RESTRICTION OF BUSINESS CAPITAL EXPENDITURE FINANCING

The Voluntary Credit Restraint Committee, at its meeting on April 18, 1951, in considering the functioning of the Program to date, discussed the matter of financing for capital expenditures and unanimously adopted the following statement.

American business concerns are currently planning to spend, and are spending, record sums for the enlargement and modernization of their facilities. According to a recent survey of business plans, outlays for new plant and equipment during 1951 may total 24 billion dollars, an increase of 29 percent from the 1950 level, nearly one-fourth greater than the previous peak expenditure of 19.2 billion in 1948, and three times the dollar expenditures in 1941.

This huge expenditure for capital investment bids fair to exceed the total amount of savings, both corporate and individual, for the next twelve months. Perhaps some substitution of bank credit for savings will be necessary. But at a time like the present when materials and labor are scarce, it becomes imperative, if we desire to curtail inflationary forces, that great care be exercised by financing institutions participating in the Voluntary Credit Restraint Program in extending credit for investment purposes where such an extension does not end to increase output essential for the defense program.

In nondefense industry, business savings, if not spent on plant and equipment, could be used as working capital to meet payrolls, carry inventories, and finance accounts of buyers of their products. This would reduce the need for bank loans and other credit.

Roughly half of the anticipated capital expenditures of business concerns during 1951 may be classed as defense or defense supporting, with emphasis on the latter. Included in these categories are expansion of basic productive capacity in such manufacturing industries as steel, aluminum, and petroleum; additions to electric power generating and transmission facilities; and the purchase of additional rolling stock by the railroads. Every effort should be made to assure availability of materials, equipment, and financing essential to the completion of these projects.

On the other hand, approximately half of the capital expenditures planned by business for 1951 falls in a more or less indeterminate class so far as their relationship to the defense effort is concerned. Some are clearly nonessential

and deferrable, while others border closely on the defense-supporting area. There is, for example, the 5.4 billion dollar capital expenditure anticipated by the commercial and miscellaneous group, a large part of which could undoubtedly be postponed without detriment to the defense effort and in the interest of reducing inflationary pressures and conserving labor and materials. Limitations on construction of specific types and governmental restrictions and allocations of materials should play a large part in curtailing some business plans for capital expenditures and in eliminating others. Thus the responsibility of financing institutions will be limited to those cases whose essentiality has not been predetermined by Government agencies.

Since it may be difficult in individual cases to differentiate essential from nonessential capital expenditures, as well as those which it would be desirable to postpone in the interest of longer run economic stability, certain tests are suggested to financing institutions cooperating in the Voluntary Credit Restraint Program in making financing decisions. Among the nonessential uses of long-term financing that in the judgment of the Committee might be postponed to a more propitious time are those for such purposes as:

(1) Construction of facilities to improve the competitive position of an individual producer of nonessential goods.

(2) Expansion and modernization expenditures of concerns in distribution or service lines where the distribution or service is not defense supporting.

(3) Expansion and modernization programs for the manufacture of consumer goods not related to the defense effort.

Financing institutions are urged to give equal consideration to the needs of small as well as large business in screening applications for long-term financing.

G.4 BULLETIN NUMBER 3 OF THE VOLUNTARY CREDIT RESTRAINT COMMITTEE

The Voluntary Credit Restraint Committee, at its latest meeting on May 3, 1951, discussed the matter of credits to State and local governments and unanimously adopted the following statement:

In 1951 State and local debt outstanding has reached an all-time high approaching 22 billion dollars. Since Korea nearly 2 billion dollars of public securities have been sold to raise new money.

To curb inflation in 1951 every segment of the economy, public and private, must reduce expenditures wherever possible. Financing institutions participating in the Voluntary Credit Restraint Program should carefully screen loans to State and local governments as well as loans to other borrowers. Expansion programs that under normal conditions would be financed without hesitation should be critically examined. Ordinary government as well as private expenditures should be met largely out of current revenue rather than financed by new borrowing. If not urgently needed for preservation of public health and safety or for purposes directly related to defense, public works should be deferred.

Long-term borrowing. Projects for expanding or modernizing municipally owned facilities constitute the major demand for public capital borrowing. Roads, schools, water systems, drainage and sewage projects and the like are the principal purposes. In the majority of cases local governments can borrow only on the approval of the electorate, which means that long periods intervene between first proposals and final financing. In many cases funds were authorized some time ago to finance projects that are just being put under way or which will be started shortly. Some projects which had voter approval before Korea are turning out to be underfinanced at present prices and may require additional financing if they are carried forward on the basis of original plans. Examination of these plans might eliminate nonessential features and avoid more borrowing.

It is sometimes difficult in individual cases to differentiate essential from nonessential expenditures and to sort out those programs which should be undertaken immediately from those which it would be desirable to postpone. Therefore, certain tests are suggested to financing institutions cooperating in the Voluntary Credit Restraint Program to be used in arriving at financing decisions in discussions with municipal authorities.

Soldiers' bonus issues are inflationary under today's conditions. They add to the spending power of the public through the creation of credit. It would seem desirable to postpone such issues until a time when immediate purchasing power is needed to counteract unemployment and when it might be more beneficial to the veteran.

Among the types of State and local government capital outlays for which, in the judgment of the Committee, the financing should be postponed are:

1. Replacement of any existing facilities that can continue to perform their function during the emergency period.

2. Construction of facilities of the types not recommended by the Defense Production Administration -- such as recreational facilities and war memorials.

3. Acquisition of sites or rights-of-way not immediately needed.

4. Purchase of privately owned utilities by municipalities, which involves borrowing to replace equity capital.

Short-term indebtedness. Lenders are urged to encourage local governments to balance operating budgets and thus to avoid any deficit borrowing.

Borrowing in anticipation of taxes or other revenues should be held to the minimum amounts and periods required for operation of State and local governments. Such borrowing should be discouraged if it exceeds reasonable expectations of revenues, since there is always the danger that deficits may thus be concealed.

Temporary borrowing for capital purposes, unless anticipating current revenues, should be judged by the standards specified above for long-term capital loans.

Advance clearance of large issues. Regional committees have been established for consultation as to whether or not pending financing is consistent with the principles of the Voluntary Credit Restraint Program.

The Committee recognizes that the established procedure for origination and bidding on public issues of State and local governments differs from other types of financing. We are advised that for this reason Defense Mobilization Director Wilson has requested public bodies to submit financing of one million dollars or more to these regional committees for a ruling as to conformance with the Program before negotiation of private sale or advertising for public sale.

Financing institutions are requested to cooperate in this matter by not participating in the public or private sale or purchase of such securities unless the issue involved has been cleared by the proposed issuer, or as the result of an application for a ruling by the financing institution itself. All such transactions, regardless of size, should be screened by the financing institutions in accordance with the Statement of Principles of the Program, and may be referred to the regional committees if the financing institutions so desire.

G.5 BULLETIN NUMBER 4 OF THE VOLUNTARY CREDIT RESTRAINT COMMITTEE -- LOANS ON REAL ESTATE

The Voluntary Credit Restraint Committee at its meeting on June 6, 1951, discussed the application of the principles of the Voluntary Credit Restraint Program in the field of real estate credit and adopted the following statement:

Real estate credit transactions governed by Regulation X, which covers the permanent financing of most new construction and major additions or improvements to existing structures, are not normally within the area of influence of this Voluntary Program. Neither does the Program apply to FHA or VA loans or to other loans guaranteed or insured or authorized as to purpose by an agency of the United States Government. The Program does apply, however, to all other real estate credit transactions. Financing institutions extending such credit are urged to observe the principles and the spirit of the Program.

For the guidance of financing institutions in granting real estage credit encompassed by the Voluntary Program, the National Committee makes the following recommendations:

1. Loans on residential property (one- to four-family units). The Committee has been informed that most financing institutions are following conservative lending policies on existing residential properties (one- to four-family units). The Committee urges all financing institutions to follow such policies and in no case to make a loan on existing property in an amount which would cause the total amount of credit outstanding (primary and all other credit combined) with respect to the property or with respect to the transaction to exceed the limits which Regulation X imposes as to new construction.

2. Loans on agricultural property. While the Committee recognizes that in some instances a loan on agricultural property may be in effect a loan on residential property, the Committee feels that normally such a loan falls in the category of a loan on commercial property (see Section 3 below), and the lender should be guided by the recommendations of that section as to overall credit limits and purposes.

3. Loans on residential property (more than four-family units) and on commercial property. Loans on residential property (more than four-family units) and loans on commercial property, such as office buildings, stores, hotels, motels, motor courts, restaurants, etc., should be screened as to purpose and the loan should not be made unless it is in harmony with the principles of the Program. If the loan is to be made in connection with a sale of commercial or residential property a determination by the financing institution that the

sale and the sale price are bona fide may constitute a sufficient screening of the loan. The Committee conceives that it is not the function of the Voluntary Credit Restraint Program to make the transfer of real estate impossible or impracticable, but rather to reduce inflationary pressures by limiting the amount of additional credit created in the process of real estate transfer.

Financing institutions are urged to limit a loan, on any type of property described in this section, whether or not a sale is involved, to an amount which would not cause the total amount of credit outstanding with respect to the property or with respect to the transaction to exceed 66-2/3 percent of the fair value of the property. Also, the Committee urges tht financing institutions require an appropriate and substantial amortization of principal.

The Committee recognizes that hardship cases may arise where a 66-2/3 percent loan limitation would not be sound or equitable. Such cases would include a loan to finance the sale of property to close an estate or to pay estate taxes, the refinancing of a maturing mortgage, or the sale of property of a bankrupt company. The Committee makes no recommendation in such cases.

4. Loans on industrial property. Loans on industrial property should be screened as to purpose whether or not the loan is to be made in connection with a sale of real property. In this instance, however, there appears to be no need for a percentage limitation on the amount of the loan, since in the industrial field mortgage security usually is merely one of the factors considered by the lender in determining whether to make the loan and often bears comparatively little relation to the amount of the loan.

5. Sale-lease back arrangements. The Committee also urges financing institutions to recognize that in most instances a "sale-lease back" arrangement, whereby real property is purchased by a financing institution and leased to the vendor or his nominee, is a substitute for a form of financing and therefore comes within the Program and should be screened as to purpose.

G.6 BULLETIN NUMBER 5 OF THE NATIONAL VOLUNTARY CREDIT RESTRAINT COMMITTEE -- INTERNATIONAL FINANCING, JULY 23, 1951

As a result of inquiries from regional committees about the status of foreign borrowings in United States markets, the National Voluntary Credit Restraint Committee has discussed

the status of such borrowings under the Voluntary Credit Restraint Program.

The Committee concluded that all such credit applications on behalf of foreign borrowers should be screened to the same extent, and with the same purpose tests, as comparable American credits.

It may be difficult in some cases for financing institutions or Regional Committees to determine whether a proposed foreign credit would indirectly contribute to defense or other objectives of the United States Government. It will be particularly desirable, therefore, when foreign cases are submitted for review, that financing institutions submit full facts to enable a judgment as to purpose. In exceptional cases when a Regional Committee finds the facts available to it are inadequate to judge an application, the National Committee, if requested, will endeavor to obtain supplementary information from Government agencies.

G.7 BULLETIN NUMBER 6 OF THE NATIONAL VOLUNTARY CREDIT RESTRAINT COMMITTEE -- LOANS SECURED BY STOCKS AND BONDS, JULY 24, 1951

The original Statement of Principles of the Program for Voluntary Credit Restraint provided that "the foregoing principles (the antispeculative provisions) should be applied in screening as to purpose on all loans on securities whether or not covered by Regulations U or T." The first amendment to the Statement of Principles deleted the phrase "whether or" from the Statement. This provision has been the subject for a number of inquiries. For example, the question has been raised as to whether a loan on securities not covered by Regulations U or T must be screened as to purpose even though the amount of credit advanced might be permissible under these regulations. Such an interpretation would appear to treat the loans secured by unlisted stocks more severely than those on listed (i.e., "registered") securities. In order to cure this ambiguity, the following principles are recommended for your guidance by the National Committee:

(1) Loans on securities covered by Regulations U or T are basically for the purpose of purchasing or carrying listed securities. It is recommended, therefore, that all loans on securities for purchasing or carrying unlisted securities be presumed to be for a proper purpose if the amount of credit extended is no greater than that permitted in the case of listed securities by Regulations U or T.

(2) Loans on securities, whether or not listed, but not for the purpose of purchasing or carrying securities should be made only for purposes consistent with the principles of voluntary credit restraint.

G.8 RECOMMENDATIONS TO REGIONAL VOLUNTARY CREDIT RESTRAINT COMMITTEES

The following recommendations were voted at a recent meeting of the National Voluntary Credit Restraint Committee. Will you kindly give the subject matter such distribution as seems appropriate?

1. Interim and permanent financing. In certain financing programs in which the interim financing is being handled by one group and the permanent financing by a different group of financial institutions, some question has arisen as to the appropriate procedure to insure that the financing is screened under the Program.

It is the view of the National Committee that the institution making the first commitment should either screen the financing under the Program or, if it so elects, submit same to the appropriate regional committee for screening. The responsibility under the Program of financing institutions making the second commitment for financing involving substantially the same amount may be discharged by either ascertaining that the proposed financing has been approved by the appropriate regional committees in the first instance, or lacking such approval, by themselves screening in the usual manner. Should the amount sought substantially exceed that previously approved, then such excess should be screened under the Program.

Banks financing underwriters temporarily pending distribution of securities should insure that the financing has been screened by the underwriter.

2. Direct or private placements. Problems have also arisen in the case of direct or private placements in which a number of investing institutions may be interested. The problem here is to avoid multiple requests to regional committees but at the same time to insure that such issues are properly screened.

The views of the National Committee are as follows: (1) In cases where an investment banker, security dealer or other financing institution is acting as intermediary between the borrower and the lenders, the intermediary should either screen the proposed financing under the Program, or if it so elects, submit same to the appropriate regional committee for

screening. The lending financing institutions should, if the proposed financing has not already been favorably screened by a regional committee, either screen the proposed financing, or, if they so elect, submit same to an appropriate regional committee. (2) In cases where there is no intermediary, it is the responsibility of the investing institutions or agent-lender to screen the issue themselves, or if they so elect, submit same to the appropriate regional committee for screening. (3) In each instance where the first financing institution participating in the negotiations, either as intermediary or, in the absence of an intermediary, as ultimate investor or lender has submitted the proposed financing to the appropriate regional committee for screening and a favorable opinion has been accorded, the responsibility under the Program of subsequent financing institutions entering the negotiations does not extend beyond ascertaining that the proposed financing has been approved by the appropriate regional committee.

3. Loans to retire stock. The National Committee reaffirmed its position that loans to retire equity securities (including preferred stock) are contrary to the Statement of Principles of the Program in the absence of unusual extenuating circumstances.

4. Screening foreign borrowing. Since foreign borrowing in the financial markets of the United States involves a negotiated sale to a group of investment bankers (either on an agency or firm commitment basis), the investment bankers have access to all pertinent financial information regarding the borrower. Consequently, the appropriate regional committee to consider such foreign borrowing should be the committee serving in the city in which the agent or principal underwriter is domiciled.

5. State and local interim financing. Certain municipalities have been arranging interim financing. At a later date they have requested clearance of permanent financing on the grounds that inability to fund outstanding obligations would create undue hardship and embarrassment.

Bulletin Number 3 specifically recommends that "temporary borrowing for capital purposes, unless anticipating current revenues, should be judged by the standards specified...for long-term cappital loans." The Bulletin also urges local governments to balance operating budgets and to hold borrowing in anticipation of taxes or other revenues to a minimum. Consequently, financing institutions are urged to assure themselves that interim financing by State and local governments is evaluated under the Program in the same manner and by the same standards as would be applicable in the case of long-term financing.

6. Transportation equipment. The question has been raised with the National Committee as to whether loans for the purchase of transportation equipment already in use, i.e., ships, trucks, etc., were contrary to the principles of the Voluntary Credit Restraint Program.

The National Committee expressed the opinion that such loans are ordinarily not in conformance with the principles of the Voluntary Credit Restraint Program except in the event that denial of credit for such a purchase would result in the withdrawal of the equipment from active use for defense or essential civilian purposes.

7. Temporary real estate financing. The question was raised with the National Committee as to whether the Committee should amend its Bulletin Number 4 as Regulation X has recently been amended to permit temporary financing in excess of permanent financing connected with the purchase of a home when the prospective buyer is selling his present home to finance the down payment required for the purchase of the other and where the two transactions cannot be perfectly synchronized.

The view of the Committee is that there are undoubtedly some cases where the timing of the two transactions cannot be perfectly synchronized despite the best efforts of all parties concerned and that to deny temporary credit in these circumstances for this reason alone would be unrealistic and would work an undue hardship. However, lending institutions should make every effort to ascertain that the delay in sale of the present property is, in fact, unavoidable and provide for a maturity date or provisions to pay off in terms that would reflect the "temporary" nature of the credit required in such cases.

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