

117TH CONGRESS
1ST SESSION

H. R. 3125

IN THE SENATE OF THE UNITED STATES

MAY 19, 2021

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To enhance authorities under the Defense Production Act of 1950 to respond to the COVID–19 emergency, to provide additional oversight of such authorities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “COVID–19 Emergency
3 Medical Supplies Enhancement Act of 2021”.

4 **SEC. 2. DETERMINATION ON EMERGENCY SUPPLIES AND**
5 **OTHER PUBLIC HEALTH EMERGENCIES.**

6 (a) COVID–19 PANDEMIC RESPONSE.—For the pur-
7 poses of section 101 of the Defense Production Act of
8 1950 (50 U.S.C. 4511), the following materials may be
9 deemed by the President, during the COVID–19 emer-
10 gency period, to be scarce and critical materials essential
11 to the national defense and otherwise meet the require-
12 ments of section 101(b) of such Act, and funds available
13 to implement such Act may be used for the purchase, pro-
14 duction (including the construction, repair, and retro-
15 fitting of government-owned facilities as necessary), or
16 distribution of such materials:

17 (1) In vitro diagnostic products (as defined in
18 section 809.3(a) of title 21, Code of Federal Regula-
19 tions) for the detection of SARS–CoV–2 or the diag-
20 nosis of the virus that causes COVID–19, and the
21 reagents and other materials necessary for pro-
22 ducing, conducting, or administering such products,
23 and the machinery, equipment, laboratory capacity,
24 or other technology necessary to produce such prod-
25 ucts.

1 (2) Face masks and personal protective equip-
2 ment, including non-surgical isolation gowns, face
3 shields, nitrile gloves, N-95 filtering facepiece res-
4 pirators, and any other masks or equipment (includ-
5 ing durable medical equipment) determined by the
6 Secretary of Health and Human Services to be need-
7 ed to respond to the COVID-19 pandemic, and the
8 materials, machinery, additional manufacturing lines
9 or facilities, or other technology necessary to
10 produce such equipment.

11 (3) Drugs and devices (as those terms are de-
12 fined in the Federal Food, Drug, and Cosmetic Act
13 (21 U.S.C. 301 et seq.)) and biological products (as
14 that term is defined by section 351 of the Public
15 Health Service Act (42 U.S.C. 262)) that are ap-
16 proved, cleared, licensed, or authorized under either
17 of such Acts for use in treating or preventing
18 COVID-19 and symptoms related to COVID-19,
19 and any materials, manufacturing machinery, addi-
20 tional manufacturing or fill-finish lines or facilities,
21 technology, or equipment (including durable medical
22 equipment) necessary to produce or use such drugs,
23 biological products, or devices (including syringes,
24 vials, or other supplies or equipment related to deliv-
25 ery, distribution, or administration).

1 (4) Any other medical equipment or supplies
 2 determined by the Secretary of Health and Human
 3 Services or the Secretary of Homeland Security to
 4 be scarce and critical materials essential to the na-
 5 tional defense for purposes of section 101 of the De-
 6 fense Production Act of 1950 (50 U.S.C. 4511).

7 (b) FUTURE PREPAREDNESS FOR HEALTH EMER-
 8 GENCIES.—Section 702(14) of the Defense Production
 9 Act of 1950 is amended by striking “and critical infra-
 10 structure protection and restoration” and inserting “, crit-
 11 ical infrastructure protection and restoration, and public
 12 health emergency preparedness and response activities”.

13 **SEC. 3. EXERCISE OF TITLE I AUTHORITIES IN RELATION**
 14 **TO CONTRACTS BY STATE, LOCAL, OR TRIBAL**
 15 **GOVERNMENTS.**

16 (a) IN GENERAL.—In exercising authorities under
 17 title I of the Defense Production Act of 1950 (50 U.S.C.
 18 4511 et seq.) during the COVID–19 emergency period, the
 19 President (and any officer or employee of the United
 20 States to which authorities under such title I have been
 21 delegated)—

22 (1) may exercise the prioritization or allocation
 23 authority provided in such title I to exclude any ma-
 24 terials described in section 2 ordered by a State,

1 local, or Tribal government that are scheduled to be
2 delivered within 15 days of the time at which—

3 (A) the purchase order or contract by the
4 Federal Government for such materials is
5 made; or

6 (B) the materials are otherwise allocated
7 by the Federal Government under the authori-
8 ties contained in such Act; and

9 (2) shall, within 24 hours of any exercise of the
10 prioritization or allocation authority provided in such
11 title I—

12 (A) to the extent practicable notify any
13 State, local, or Tribal government if the Presi-
14 dent determines that the exercise of such au-
15 thorities would delay the receipt of such mate-
16 rials ordered by such government; and

17 (B) take such steps as may be necessary,
18 and as authorized by law, to ensure that such
19 materials ordered by such government are deliv-
20 ered in the shortest possible period, consistent
21 with the purposes of the Defense Production
22 Act of 1950.

23 (b) UPDATE TO FEDERAL REGULATIONS.—

24 (1) DPAS.—Not later than 30 days after the
25 date of enactment of this Act, the Defense Property

1 Accountability System regulations (15 C.F.R. part
2 700) shall be revised to reflect the requirements of
3 subsection (a).

4 (2) FAR.—Not later than 30 days after the re-
5 visions required by paragraph (1) are made, the
6 Federal Acquisition Regulation shall be revised to
7 reflect the requirements of subsection (a), consistent
8 with the revisions made pursuant to paragraph (1).

9 **SEC. 4. ENGAGEMENT WITH THE PRIVATE SECTOR.**

10 (a) OUTREACH REPRESENTATIVE.—Consistent with
11 the authorities in title VII of the Defense Production Act
12 of 1950 (50 U.S.C. 4551 et seq.), the Administrator of
13 the Federal Emergency Management Agency, in consulta-
14 tion with the Secretary of Health and Human Services,
15 may designate or appoint, pursuant to section 703 of such
16 Act (50 U.S.C. 4553), an individual to be known as the
17 “Outreach Representative” for the COVID–19 emergency
18 period. Such individual shall—

19 (1) be appointed from among individuals with
20 substantial experience in the production or distribu-
21 tion of medical supplies or equipment; and

22 (2) act as the Government-wide single point of
23 contact during the COVID–19 emergency for out-
24 reach to manufacturing companies and their sup-
25 pliers who may be interested in producing medical

1 supplies or equipment, including the materials de-
2 scribed under section 2.

3 (b) ENCOURAGING PARTNERSHIPS.—During the
4 COVID–19 emergency period, the Outreach Representa-
5 tive shall seek to develop partnerships between companies,
6 in coordination with any overall coordinator appointed by
7 the President to oversee the response to the COVID–19
8 emergency, including through the exercise of the authori-
9 ties delegated by the President under section 708 of the
10 Defense Production Act of 1950 (50 U.S.C. 4558).

11 **SEC. 5. ENHANCEMENT OF SUPPLY CHAIN PRODUCTION.**

12 In exercising authority under title III of the Defense
13 Production Act of 1950 (50 U.S.C. 4531 et seq.) with re-
14 spect to materials described in section 2, the President
15 shall seek to ensure that support is provided to companies
16 that comprise the supply chains for reagents, components,
17 raw materials, and other materials and items necessary
18 to produce or use the materials described in section 2 to
19 the extent necessary for the national defense during the
20 COVID–19 emergency period.

21 **SEC. 6. ENHANCED REPORTING DURING COVID–19 EMER-**
22 **GENCY.**

23 (a) REPORT ON EXERCISING AUTHORITIES UNDER
24 THE DEFENSE PRODUCTION ACT OF 1950.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President, in consultation with the Administrator of the Federal Emergency Management Agency, the Secretary of Defense, and the Secretary of Health and Human Services, shall submit to the appropriate congressional committees a report on the exercise of authorities under titles I, III, and VII of the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) prior to the date of such report for the purposes of the COVID–19 response.

(2) CONTENTS.—The report required under subsection (a) and the update required under paragraph (3) shall include the following:

(A) IN GENERAL.—With respect to each exercise of such authority—

(i) an explanation of the purpose of the applicable contract, purchase order, or other exercise of authority (including an allocation of materials, services, and facilities under section 101(a)(2) of the Defense Production Act of 1950 (50 U.S.C. 4511(a)(2));

(ii) the cost of such exercise of authority; and

1 (iii) if applicable—

2 (I) the amount of goods that
3 were purchased or allocated;

4 (II) an identification of the entity
5 awarded a contract or purchase order
6 or that was the subject of the exercise
7 of authority; and

8 (III) an identification of any en-
9 tity that had shipments delayed by the
10 exercise of any authority under the
11 Defense Production Act of 1950 (50
12 U.S.C. 4501 et seq.).

13 (B) CONSULTATIONS.—A description of
14 any consultations conducted with relevant
15 stakeholders on the needs addressed by the ex-
16 ercise of the authorities described in paragraph
17 (1).

18 (3) UPDATE.—The President shall provide an
19 additional briefing to the appropriate congressional
20 committees on the matters described under para-
21 graph (2) no later than four months after the sub-
22 mission of the report.

23 (b) EXERCISE OF LOAN AUTHORITIES.—

24 (1) IN GENERAL.—Any loan made pursuant to
25 section 302 or 303 of the Defense Production Act of

1 1950, carried out by the United States International
2 Development Finance Corporation pursuant to the
3 authorities delegated by Executive Order No. 13922,
4 shall be subject to the notification requirements con-
5 tained in section 1446 of the BUILD Act of 2018
6 (22 U.S.C. 9656).

7 (2) APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—For purposes of the notifications required by
9 paragraph (1) the term “appropriate congressional
10 committees”, as used section 1446 of the BUILD
11 Act of 2018, shall be deemed to include the Com-
12 mittee on Financial Services of the House of Rep-
13 resentatives and the Committee on Banking, Hous-
14 ing and Urban Development of the Senate.

15 (c) SUNSET.—The requirements of this section shall
16 terminate on the later of—

17 (1) December 31, 2021; or

18 (2) the end of the COVID–19 emergency pe-
19 riod.

20 **SEC. 7. REPORT ON ACTIVITIES INVOLVING SMALL BUSI-**
21 **NESS.**

22 The report required by section 304(f)(3) of the De-
23 fense Production Act of 1950 (50 U.S.C. 4534(f)(3)) for
24 fiscal years 2022 and 2023 shall include the percentage
25 of contracts awarded using funds to carry out the Defense

1 Production Act of 1950 for each of the fiscal years 2022
2 and 2023, respectively, to small business concerns (as de-
3 fined under section 702 of such Act).

4 **SEC. 8. DEFINITIONS.**

5 In this Act:

6 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
7 **TEES.**—The term “appropriate congressional com-
8 mittees” means the Committees on Appropriations,
9 Armed Services, Energy and Commerce, Financial
10 Services, and Homeland Security of the House of
11 Representatives and the Committees on Appropria-
12 tions, Armed Services, Banking, Housing, and
13 Urban Affairs, Health, Education, Labor, and Pen-
14 sions, Homeland Security and Governmental Affairs,
15 and Veterans’ Affairs of the Senate.

16 (2) **COVID–19 EMERGENCY PERIOD.**—The
17 term “COVID–19 emergency period” means the pe-
18 riod beginning on the date of enactment of this Act
19 and ending on the earlier of—

20 (A) the end of the incident period for the
21 emergency declared on March 13, 2020, by the
22 President under section 501 of the Robert T.
23 Stafford Disaster Relief and Emergency Assist-
24 ance Act (42 U.S.C. 4121 et seq.) relating to

1 the Coronavirus Disease 2019 (COVID–19)
2 pandemic; or

3 (B) September 30, 2025.

4 (3) RELEVANT STAKEHOLDER.—The term “rel-
5 evant stakeholder” means—

6 (A) representative private sector entities;

7 (B) representatives of the nonprofit sector;

8 (C) representatives of primary and sec-
9 ondary school systems; and

10 (D) representatives of organizations rep-
11 resenting workers, including health workers,
12 manufacturers, teachers, other public sector
13 employees, and service sector workers.

14 (4) STATE.—The term “State” means each of
15 the several States, the District of Columbia, the
16 Commonwealth of Puerto Rico, and any territory or
17 possession of the United States.

Passed the House of Representatives May 18, 2021.

Attest: CHERYL L. JOHNSON,
Clerk.