

117TH CONGRESS
1ST SESSION

H. R. 3125

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2021

Mr. VARGAS (for himself and Mr. HILL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

3 (a) COVID–19 PANDEMIC RESPONSE.—For the pur-
4 poses of section 101 of the Defense Production Act of
5 1950 (50 U.S.C. 4511), the following materials may be
6 deemed by the President, during the COVID–19 emer-
7 gency period, to be scarce and critical materials essential
8 to the national defense and otherwise meet the require-
9 ments of section 101(b) of such Act, and funds available
10 to implement such Act may be used for the purchase, pro-
11 duction (including the construction, repair, and retro-
12 fitting of government-owned facilities as necessary), or
13 distribution of such materials:

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

23 (2) Face masks and personal protective equip-
24 ment, including non-surgical isolation gowns, face
25 shields, nitrile gloves, N–95 filtering facepiece res-
26 pirators, and any other masks or equipment (includ-

1 ing durable medical equipment) determined by the
2 Secretary of Health and Human Services to be need-
3 ed to respond to the COVID–19 pandemic, and the
4 materials, machinery, additional manufacturing lines
5 or facilities, or other technology necessary to
6 produce such equipment.

7 (3) Drugs and devices (as those terms are de-
8 fined in the Federal Food, Drug, and Cosmetic Act
9 (21 U.S.C. 301 et seq.)) and biological products (as
10 that term is defined by section 351 of the Public
11 Health Service Act (42 U.S.C. 262)) that are ap-
12 proved, cleared, licensed, or authorized under either
13 of such Acts for use in treating or preventing
14 COVID–19 and symptoms related to COVID–19,
15 and any materials, manufacturing machinery, addi-
16 tional manufacturing or fill-finish lines or facilities,
17 technology, or equipment (including durable medical
18 equipment) necessary to produce or use such drugs,
19 biological products, or devices (including syringes,
20 vials, or other supplies or equipment related to deliv-
21 ery, distribution, or administration).

22 (4) Any other medical equipment or supplies
23 determined by the Secretary of Health and Human
24 Services or the Secretary of Homeland Security to
25 be scarce and critical materials essential to the na-

1 tional defense for purposes of section 101 of the De-
 2 fense Production Act of 1950 (50 U.S.C. 4511).

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

9 **SEC. 3. EXERCISE OF TITLE I AUTHORITIES IN RELATION**
 10 **TO CONTRACTS BY STATE, LOCAL, OR TRIBAL**
 11 **GOVERNMENTS.**

12 (a) IN GENERAL.—In exercising authorities under
 13 title I of the Defense Production Act of 1950 (50 U.S.C.
 14 4511 et seq.) during the COVID–19 emergency period, the
 15 President (and any officer or employee of the United
 16 States to which authorities under such title I have been
 17 delegated)—

18 (1) may exercise the prioritization or allocation
 19 authority provided in such title I to exclude any ma-
 20 terials described in section 2 ordered by a State,
 21 local, or Tribal government that are scheduled to be
 22 delivered within 15 days of the time at which—

23 (A) the purchase order or contract by the
 24 Federal Government for such materials is
 25 made; or

1 (B) the materials are otherwise allocated
2 by the Federal Government under the authori-
3 ties contained in such Act; and

4 (2) shall, within 24 hours of any exercise of the
5 prioritization or allocation authority provided in such
6 title I—

7 (A) to the extent practicable notify any
8 State, local, or Tribal government if the Presi-
9 dent determines that the exercise of such au-
10 thorities would delay the receipt of such mate-
11 rials ordered by such government; and

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

18 (b) UPDATE TO FEDERAL REGULATIONS.—

19 (1) DPAS.—Not later than 30 days after the
20 date of enactment of this Act, the Defense Property
21 Accountability System regulations (15 C.F.R. part
22 700) shall be revised to reflect the requirements of
23 subsection (a).

24 (2) FAR.—Not later than 30 days after the re-
25 visions required by paragraph (1) are made, the

1 Federal Acquisition Regulation shall be revised to
2 reflect the requirements of subsection (a), consistent
3 with the revisions made pursuant to paragraph (1).

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

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

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

17 (2) act as the Government-wide single point of
18 contact during the COVID–19 emergency for out-
19 reach to manufacturing companies and their sup-
20 pliers who may be interested in producing medical
21 supplies or equipment, including the materials de-
22 scribed under section 2.

23 (b) ENCOURAGING PARTNERSHIPS.—During the
24 COVID–19 emergency period, the Outreach Representa-
25 tive shall seek to develop partnerships between companies,

1 in coordination with any overall coordinator appointed by
2 the President to oversee the response to the COVID–19
3 emergency, including through the exercise of the authori-
4 ties delegated by the President under section 708 of the
5 Defense Production Act of 1950 (50 U.S.C. 4558).

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

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

16 **SEC. 6. ENHANCED REPORTING DURING COVID–19 EMER-**
17 **GENCY.**

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

20 (1) IN GENERAL.—Not later than 90 days after
21 the date of the enactment of this Act, the President,
22 in consultation with the Administrator of the Fed-
23 eral Emergency Management Agency, the Secretary
24 of Defense, and the Secretary of Health and Human
25 Services, shall submit to the appropriate congres-

1 sional committees a report on the exercise of au-
2 thorities under titles I, III, and VII of the Defense
3 Production Act of 1950 (50 U.S.C. 4501 et seq.)
4 prior to the date of such report for the purposes of
5 the COVID–19 response.

6 (2) CONTENTS.—The report required under
7 subsection (a) and the update required under para-
8 graph (3) shall include the following:

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

11 (i) an explanation of the purpose of
12 the applicable contract, purchase order, or
13 other exercise of authority (including an
14 allocation of materials, services, and facili-
15 ties under section 101(a)(2) of the Defense
16 Production Act of 1950 (50 U.S.C.
17 4511(a)(2));

18 (ii) the cost of such exercise of au-
19 thority; and

20 (iii) if applicable—

21 (I) the amount of goods that
22 were purchased or allocated;

23 (II) an identification of the entity
24 awarded a contract or purchase order

1 or that was the subject of the exercise
2 of authority; and

3 (III) an identification of any en-
4 tity that had shipments delayed by the
5 exercise of any authority under the
6 Defense Production Act of 1950 (50
7 U.S.C. 4501 et seq.).

8 (B) CONSULTATIONS.—A description of
9 any consultations conducted with relevant
10 stakeholders on the needs addressed by the ex-
11 ercise of the authorities described in paragraph
12 (1).

13 (3) UPDATE.—The President shall provide an
14 additional briefing to the appropriate congressional
15 committees on the matters described under para-
16 graph (2) no later than four months after the sub-
17 mission of the report.

18 (b) EXERCISE OF LOAN AUTHORITIES.—

19 (1) IN GENERAL.—Any loan made pursuant to
20 section 302 or 303 of the Defense Production Act of
21 1950, carried out by the United States International
22 Development Finance Corporation pursuant to the
23 authorities delegated by Executive Order No. 13922,
24 shall be subject to the notification requirements con-

1 tained in section 1446 of the BUILD Act of 2018
2 (22 U.S.C. 9656).

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

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

13 (1) December 31, 2021; or

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

16 **SEC. 7. REPORT ON ACTIVITIES INVOLVING SMALL BUSI-**
17 **NESS.**

18 The report required by section 304(f)(3) of the De-
19 fense Production Act of 1950 (50 U.S.C. 4534(f)(3)) for
20 fiscal years 2022 and 2023 shall include the percentage
21 of contracts awarded using funds to carry out the Defense
22 Production Act of 1950 for each of the fiscal years 2022
23 and 2023, respectively, to small business concerns (as de-
24 fined under section 702 of such Act).

1 **SEC. 8. DEFINITIONS.**

2 In this Act:

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

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

17 (A) the end of the incident period for the
18 emergency declared on March 13, 2020, by the
19 President under section 501 of the Robert T.
20 Stafford Disaster Relief and Emergency Assist-
21 ance Act (42 U.S.C. 4121 et seq.) relating to
22 the Coronavirus Disease 2019 (COVID–19)
23 pandemic; or

24 (B) September 30, 2025.

25 (3) **RELEVANT STAKEHOLDER.**—The term “rel-
26 evant stakeholder” means—

- 1 (A) representative private sector entities;
2 (B) representatives of the nonprofit sector;
3 (C) representatives of primary and sec-
4 ondary school systems; and
5 (D) representatives of organizations rep-
6 resenting workers, including health workers,
7 manufacturers, teachers, other public sector
8 employees, and service sector workers.
- 9 (4) STATE.—The term “State” means each of
10 the several States, the District of Columbia, the
11 Commonwealth of Puerto Rico, and any territory or
12 possession of the United States.

