

Union Calendar No. 436

118TH CONGRESS
2^D SESSION

H. R. 1166

[Report No. 118-524]

To enhance authorities under the Defense Production Act of 1950 to respond to the public health emergencies, to provide additional oversight of such authorities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2023

Mr. VARGAS introduced the following bill; which was referred to the Committee on Financial Services

MAY 23, 2024

Additional sponsor: Mr. HILL

MAY 23, 2024

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on February 24, 2023]

A BILL

To enhance authorities under the Defense Production Act of 1950 to respond to the public health emergencies, 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 “Public Health Emer-*
5 *gency Medical Supplies Enhancement Act of 2023”.*

6 **SEC. 2. PUBLIC HEALTH EMERGENCIES.**

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

13 *(b) PUBLIC HEALTH EMERGENCY.—The Defense Pro-*
14 *duction Act of 1950 (50 U.S.C. 4501 et seq.) is amended*
15 *by inserting after section 711 the following:*

16 **“SEC. 712. PUBLIC HEALTH EMERGENCIES.**

17 *“(a) SCARCE AND CRITICAL MATERIALS.—During a*
18 *public health emergency, any medical equipment or sup-*
19 *plies determined by the Secretary of Health and Human*
20 *Services or the Secretary of Homeland Security to be scarce*
21 *and critical materials essential to the national defense for*
22 *purposes of section 101 may be deemed by the President*
23 *to be a scarce and critical material essential to the national*
24 *defense for purposes of section 101 and otherwise meet the*
25 *requirements of section 101(b), and funds available to im-*

1 *plement this Act may be used for the purchase, production*
2 *(including the construction, repair, and retrofitting of gov-*
3 *ernment-owned facilities as necessary), or distribution of*
4 *such medical equipment or supplies.*

5 “(b) *EXERCISE OF TITLE I AUTHORITIES IN RELA-*
6 *TION TO CONTRACTS BY STATE, LOCAL, OR TRIBAL GOV-*
7 *ERNMENTS.—In exercising authorities under title I during*
8 *a public health emergency, the President (and any officer*
9 *or employee of the United States to which authorities under*
10 *such title I have been delegated)—*

11 “(1) *may exercise the prioritization or allocation*
12 *authority provided in such title I to exclude any ma-*
13 *terials or supplies described in subsection (a) ordered*
14 *by a State, local, or Tribal government that are*
15 *scheduled to be delivered within 15 days of the time*
16 *at which—*

17 “(A) *the purchase order or contract by the*
18 *Federal Government for such materials or sup-*
19 *plies is made; or*

20 “(B) *the materials or supplies are otherwise*
21 *allocated by the Federal Government under the*
22 *authorities contained in this Act; and*

23 “(2) *shall, within 24 hours of any exercise of the*
24 *prioritization or allocation authority provided in*
25 *such title I—*

1 “(A) to the extent practicable notify any
2 State, local, or Tribal government if the Presi-
3 dent determines that the exercise of such authori-
4 ties would delay the receipt of such materials or
5 supplies ordered by such government; and

6 “(B) take such steps as may be necessary,
7 and as authorized by law, to ensure that such
8 materials or supplies ordered by such govern-
9 ment are delivered in the shortest possible period,
10 consistent with the purposes of this Act.

11 “(c) *ENGAGEMENT WITH THE PRIVATE SECTOR.*—

12 “(1) *OUTREACH REPRESENTATIVE.*—Consistent
13 with the authorities in this title VII, the Adminis-
14 trator of the Federal Emergency Management Agency,
15 in consultation with the Secretary of Health and
16 Human Services, may designate or appoint, pursuant
17 to section 703, an individual to be known as the ‘Out-
18 reach Representative’ for any public health emer-
19 gency. Such individual shall—

20 “(A) be appointed from among individuals
21 with substantial experience in the production or
22 distribution of medical supplies or equipment;
23 and

24 “(B) act as the Government-wide single
25 point of contact during the public health emer-

1 *gency for outreach to manufacturing companies*
2 *and their suppliers who may be interested in*
3 *producing medical supplies or equipment, in-*
4 *cluding the materials described under subsection*
5 *(a).*

6 “(2) *ENCOURAGING PARTNERSHIPS.*—*During a*
7 *public health emergency, the Outreach Representative*
8 *shall seek to develop partnerships between companies,*
9 *in coordination with any overall coordinator ap-*
10 *pointed by the President to oversee the response to the*
11 *public health emergency, including through the exer-*
12 *cise of the authorities delegated by the President*
13 *under section 708.*

14 “(d) *ENHANCEMENT OF SUPPLY CHAIN PRODUC-*
15 *TION.*—*In exercising authority under title III during a*
16 *public health emergency with respect to materials described*
17 *in subsection (a), the President shall seek to ensure that*
18 *support is provided to companies that comprise the supply*
19 *chains for reagents, components, raw materials, and other*
20 *materials and items necessary to produce or use the mate-*
21 *rials described in subsection (a), if applicable, to the extent*
22 *necessary for the national defense during the public health*
23 *emergency.*

24 “(e) *ENHANCED REPORTING DURING A PUBLIC*
25 *HEALTH EMERGENCY.*—

1 “(1) *IN GENERAL.*—Not later than 90 days after
2 *the use of authorities under this Act with respect to*
3 *a public health emergency, and every 120 days there-*
4 *after until the termination of such public health emer-*
5 *gency, the President, in consultation with the Admin-*
6 *istrator of the Federal Emergency Management Agen-*
7 *cy, the Secretary of Defense, and the Secretary of*
8 *Health and Human Services, shall submit to the ap-*
9 *propriate congressional committees a report on the ex-*
10 *ercise of authorities under titles I, III, and VII with*
11 *respect to the public health emergency.*

12 “(2) *CONTENTS.*—Each report required under
13 *paragraph (1) shall include the following:*

14 “(A) *IN GENERAL.*—With respect to each ex-
15 *ercise of such authority—*

16 “(i) *an explanation of the purpose of*
17 *the applicable contract, purchase order, or*
18 *other exercise of authority (including an al-*
19 *location of materials, services, and facilities*
20 *under section 101(a)(2));*

21 “(ii) *the cost of such exercise of author-*
22 *ity; and*

23 “(iii) *if applicable—*

24 “(I) *the amount of goods that*
25 *were purchased or allocated;*

1 “(II) an identification of the enti-
2 ty awarded a contract or purchase
3 order or that was the subject of the ex-
4 ercise of authority; and

5 “(III) an identification of any en-
6 tity that had shipments delayed by the
7 exercise of any authority under this
8 Act.

9 “(B) CONSULTATIONS.—A description of
10 any consultations conducted with relevant stake-
11 holders on the needs addressed by the exercise of
12 the authorities described in paragraph (1).

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

18 “(f) DEFINITIONS.—In this section:

19 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—The term ‘appropriate congressional commit-
21 tees’ means the Committees on Appropriations, Armed
22 Services, Energy and Commerce, Financial Services,
23 and Homeland Security of the House of Representa-
24 tives and the Committees on Appropriations, Armed
25 Services, Banking, Housing, and Urban Affairs,

1 *Health, Education, Labor, and Pensions, Homeland*
2 *Security and Governmental Affairs, and Veterans' Af-*
3 *airs of the Senate.*

4 “(2) *PUBLIC HEALTH EMERGENCY.*—*The term*
5 *‘public health emergency’ means a public health emer-*
6 *gency determined pursuant to section 319 of the Pub-*
7 *lic Health Service Act (42 U.S.C. 247d).*

8 “(3) *RELEVANT STAKEHOLDER.*—*The term ‘rel-*
9 *evant stakeholder’ means—*

10 “(A) *representative private sector entities;*

11 “(B) *representatives of the nonprofit sector;*

12 “(C) *representatives of primary and sec-*
13 *ondary school systems; and*

14 “(D) *representatives of organizations rep-*
15 *resenting workers, including health workers,*
16 *manufacturers, teachers, other public sector em-*
17 *ployees, and service sector workers.*

18 “(4) *STATE.*—*The term ‘State’ means each of the*
19 *several States, the District of Columbia, the Common-*
20 *wealth of Puerto Rico, and any territory or possession*
21 *of the United States.”.*

22 *(c) UPDATE TO FEDERAL REGULATIONS.—*

23 (1) *DPAS.*—*Not later than 30 days after the*
24 *date of enactment of this Act, the Defense Property*
25 *Accountability System regulations (15 C.F.R. part*

1 700) shall be revised to reflect the requirements of sec-
2 tion 712(b) of the Defense Production Act of 1950.

3 (2) FAR.—Not later than 30 days after the revi-
4 sions required by paragraph (1) are made, the Fed-
5 eral Acquisition Regulation shall be revised to reflect
6 the requirements of section 712(b) of the Defense Pro-
7 duction Act of 1950, consistent with the revisions
8 made pursuant to paragraph (1).

9 **SEC. 3. REPORT ON ACTIVITIES INVOLVING SMALL BUSI-**
10 **NESS.**

11 The report required by section 304(f)(3) of the Defense
12 Production Act of 1950 (50 U.S.C. 4534(f)(3)) with respect
13 to fiscal years 2023 and 2024 shall include the percentage
14 of contracts awarded using funds to carry out the Defense
15 Production Act of 1950 for each of the fiscal years 2023
16 and 2024, respectively, to small business concerns (as de-
17 fined under section 702 of such Act).

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