117TH CONGRESS
1ST SESSION

H. R. 3125

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''COVID–19 Emergency Medical Supplies Enhancement Act of 2021''.

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

(a) COVID–19 PANDEMIC RESPONSE.—For the purposes of section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511), the following materials may be deemed by the President, during the COVID–19 emergency period, to be scarce and critical materials essential to the national defense and otherwise meet the requirements of section 101(b) of such Act, and funds available to implement such Act may be used for the purchase, production (including the construction, repair, and retrofitting of government-owned facilities as necessary), or distribution of such materials:

(1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19, and the reagents and other materials necessary for producing, conducting, or administering such products, and the machinery, equipment, laboratory capacity, or other technology necessary to produce such products.

(2) Face masks and personal protective equipment, including non-surgical isolation gowns, face shields, nitrile gloves, N–95 filtering facepiece respirators, and any other masks or equipment (including durable medical equipment) determined by the Secretary of Health and Human Services to be needed to respond to the COVID–19 pandemic, and the materials, machinery, additional manufacturing lines or facilities, or other technology necessary to produce such equipment.

(3) Drugs and devices (as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)) and biological products (as that term is defined by section 351 of the Public Health Service Act (42 U.S.C. 262)) that are approved, cleared, licensed, or authorized under either of such Acts for use in treating or preventing COVID–19 and symptoms related to COVID–19, and any materials, manufacturing machinery, additional manufacturing or fill-finish lines or facilities, technology, or equipment (including durable medical equipment) necessary to produce or use such drugs, biological products, or devices (including syringes, vials, or other supplies or equipment related to delivery, distribution, or administration).

(4) Any other medical equipment or supplies determined by the Secretary of Health and Human Services or the Secretary of Homeland Security to be scarce and critical materials essential to the national defense for purposes of section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511).

(b) FUTURE PREPAREDNESS FOR HEALTH EMERGENCIES.—Section 702(14) of the Defense Production Act of 1950 is amended by striking ''and critical infrastructure protection and restoration'' and inserting '', critical infrastructure protection and restoration, and public health emergency preparedness and response activities''.

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

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

(1) may exercise the prioritization or allocation authority provided in such title I to exclude any materials described in section 2 ordered by a State,

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

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

(B) the materials are otherwise allocated by the Federal Government under the authorities contained in such Act; and

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

(A) to the extent practicable notify any State, local, or Tribal government if the President determines that the exercise of such authorities would delay the receipt of such materials ordered by such government; and

(B) take such steps as may be necessary, and as authorized by law, to ensure that such materials ordered by such government are delivered in the shortest possible period, consistent with the purposes of the Defense Production Act of 1950.

(b) UPDATE TO FEDERAL REGULATIONS.—

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

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

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

SEC. 4. ENGAGEMENT WITH THE PRIVATE SECTOR.

(a) OUTREACH REPRESENTATIVE.—Consistent with the authorities in title VII of the Defense Production Act of 1950 (50 U.S.C. 4551 et seq.), the Administrator of the Federal Emergency Management Agency, in consultation with the Secretary of Health and Human Services, may designate or appoint, pursuant to section 703 of such Act (50 U.S.C. 4553), an individual to be known as the ''Outreach Representative'' for the COVID–19 emergency period. Such individual shall—

(1) be appointed from among individuals with substantial experience in the production or distribution of medical supplies or equipment; and

(2) act as the Government-wide single point of contact during the COVID–19 emergency for outreach to manufacturing companies and their suppliers who may be interested in producing medical

supplies or equipment, including the materials described under section 2.

(b) ENCOURAGING PARTNERSHIPS.—During the COVID–19 emergency period, the Outreach Representative shall seek to develop partnerships between companies, in coordination with any overall coordinator appointed by the President to oversee the response to the COVID–19 emergency, including through the exercise of the authorities delegated by the President under section 708 of the Defense Production Act of 1950 (50 U.S.C. 4558).

SEC. 5. ENHANCEMENT OF SUPPLY CHAIN PRODUCTION.

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

SEC. 6. ENHANCED REPORTING DURING COVID–19 EMERGENCY.

(a) REPORT ON EXERCISING AUTHORITIES UNDER 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

(iii) if applicable—

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

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

(III) an identification of any entity that had shipments delayed by the exercise of any authority under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

(B) CONSULTATIONS.—A description of any consultations conducted with relevant stakeholders on the needs addressed by the exercise of the authorities described in paragraph (1).

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

(b) EXERCISE OF LOAN AUTHORITIES.—

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

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

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of the notifications required by paragraph (1) the term ''appropriate congressional committees'', as used section 1446 of the BUILD Act of 2018, shall be deemed to include the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Development of the Senate.

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

(1) December 31, 2021; or

(2) the end of the COVID–19 emergency period.

SEC. 7. REPORT ON ACTIVITIES INVOLVING SMALL BUSINESS.

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

Production Act of 1950 for each of the fiscal years 2022 and 2023, respectively, to small business concerns (as defined under section 702 of such Act).

SEC. 8. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committees on Appropriations, Armed Services, Energy and Commerce, Financial Services, and Homeland Security of the House of Representatives and the Committees on Appropriations, Armed Services, Banking, Housing, and Urban Affairs, Health, Education, Labor, and Pensions, Homeland Security and Governmental Affairs, and Veterans' Affairs of the Senate.

(2) COVID–19 EMERGENCY PERIOD.—The term ''COVID–19 emergency period'' means the period beginning on the date of enactment of this Act and ending on the earlier of—

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

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

(B) September 30, 2025.

(3) RELEVANT STAKEHOLDER.—The term ''relevant stakeholder'' means—

(A) representative private sector entities;

(B) representatives of the nonprofit sector;

(C) representatives of primary and secondary school systems; and

(D) representatives of organizations representing workers, including health workers, manufacturers, teachers, other public sector employees, and service sector workers.

(4) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Passed the House of Representatives May 18, 2021.

Attest:

Clerk.

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