

117TH CONGRESS
1ST SESSION

S. 266

To require the Secretary of Health and Human Services to use authorities under the Defense Production Act of 1950 to prioritize contracts necessary to promote pandemic preparedness and response, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Ms. DUCKWORTH (for herself and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the Secretary of Health and Human Services to use authorities under the Defense Production Act of 1950 to prioritize contracts necessary to promote pandemic preparedness and response, 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 Production Act of 2021”.

1 **SEC. 2. PRIORITIZATION OF CONTRACTS NECESSARY TO**
2 **PROMOTE PANDEMIC PREPAREDNESS AND**
3 **RESPONSE.**

4 (a) IN GENERAL.—Title I of the Defense Production
5 Act of 1950 (50 U.S.C. 4511 et seq.) is amended by in-
6 serting after section 101 the following:

7 **“SEC. 101A. PRIORITIZATION OF CONTRACTS NECESSARY**
8 **TO PROMOTE PANDEMIC PREPAREDNESS**
9 **AND RESPONSE.**

10 “(a) IN GENERAL.—The Secretary of Health and
11 Human Services shall—

12 “(1) require that performance under contracts
13 or orders (other than contracts of employment) that
14 the Secretary deems necessary or appropriate to pro-
15 mote preparedness for and response to a pandemic
16 shall take priority over performance under any other
17 contract or order;

18 “(2) for the purpose of assuring such priority,
19 require acceptance and performance of such con-
20 tracts or orders in preference to other contracts or
21 orders by persons the Secretary finds to be capable
22 of their performance; and

23 “(3) allocate materials, services, and facilities in
24 such manner, upon such conditions, and to such ex-
25 tent as the Secretary shall deem necessary or appro-
26 priate to promote the public health.

1 “(b) USE OF AUTHORITY.—The powers granted by
2 this section shall be used to control the general distribu-
3 tion of a material in the civilian market if the Secretary
4 finds that—

5 “(1) such material is a scarce and critical mate-
6 rial essential to public health; and

7 “(2) the requirements of public health for such
8 material cannot otherwise be met without creating a
9 significant dislocation of the normal distribution of
10 such material in the civilian market to such a degree
11 as to create appreciable hardship.”.

12 (b) CONFORMING AMENDMENTS.—The Defense Pro-
13 duction Act of 1950 (50 U.S.C. 4501 et seq.) is amend-
14 ed—

15 (1) in section 102 (50 U.S.C. 4512), in the last
16 sentence, by inserting “, 101A,” after “sections
17 101”; and

18 (2) in section 701(e) (50 U.S.C. 4551(e)), by
19 inserting “or the Secretary of Health and Human
20 Services makes a determination to exercise any au-
21 thority to allocate any material pursuant to section
22 101A,” after “section 101,”.

1 **SEC. 3. REPORTING OF ACTIONS TAKEN UNDER TITLE I OF**
 2 **DEFENSE PRODUCTION ACT OF 1950 IN FED-**
 3 **ERAL PROCUREMENT DATA SYSTEM.**

4 Title I of the Defense Production Act of 1950 (50
 5 U.S.C. 4511 et seq.) is amended by adding at the end
 6 the following:

7 **“SEC. 109. REPORTING OF ACTIONS IN FEDERAL PROCURE-**
 8 **MENT DATA SYSTEM.**

9 “Any action taken under section 101 or 101A shall
 10 be reported in the Federal Procurement Data System.”.

11 **SEC. 4. USE OF DEFENSE PRODUCTION ACT FUND FOR**
 12 **PANDEMIC PREPAREDNESS AND RESPONSE.**

13 Section 304 of the Defense Production Act of 1950
 14 (50 U.S.C. 4534) is amended—

15 (1) by striking subsection (e) and inserting the
 16 following:

17 “(e) USE OF FUND.—

18 “(1) IN GENERAL.—The Fund shall be avail-
 19 able to carry out the provisions and purposes of this
 20 title, subject to the limitations set forth in this Act
 21 and in appropriations Acts.

22 “(2) DISTRIBUTION.—The Fund manager des-
 23 ignated under subsection (e) shall ensure that
 24 amounts in the Fund are fairly distributed to the of-
 25 fice established under section 305 and all other Fed-

1 eral agencies with responsibility for carrying out the
2 provisions and purposes of this title.”;

3 (2) by striking subsection (e);

4 (3) by redesignating subsections (f) and (g) as
5 subsections (e) and (f), respectively;

6 (4) in subsection (e), as redesignated by para-
7 graph (3)—

8 (A) in paragraph (2), by striking “; and”
9 and inserting a semicolon;

10 (B) in paragraph (3), by striking the pe-
11 riod at the end and inserting “; and”; and

12 (C) by adding at the end the following:

13 “(4) coordinating with other Federal agencies
14 to ensure that amounts in the Fund are made avail-
15 able to agencies other than the agency of the Fund
16 manager, especially for public health programs.”;
17 and

18 (5) by adding at the end the following:

19 “(g) INTERAGENCY ROTATION PROGRAM.—

20 “(1) IN GENERAL.—The Secretary of Health
21 and Human Services and the Secretary of Defense
22 shall establish an interagency rotation program that
23 provides for personnel of the components of the De-
24 partment of Health and Human Services specified in
25 paragraph (2) to take rotational assignments within

1 the Office of the Deputy Assistant Secretary of De-
2 fense for Industrial Policy, and for personnel of that
3 Office to take rotational assignments within such
4 components, for the purposes of—

5 “(A) strengthening working relationships
6 between agencies;

7 “(B) promoting interagency experience;
8 and

9 “(C) ensuring the amounts in the Fund
10 enable the use of highly tailored economic in-
11 centives to boost the manufacturing of critical
12 public health resources that are vital to effective
13 pandemic preparedness and response in the
14 United States.

15 “(2) COMPONENTS SPECIFIED.—The compo-
16 nents of the Department of Health and Human
17 Services specified in this paragraph are the fol-
18 lowing:

19 “(A) The Office of the Assistant Secretary
20 for Preparedness and Response.

21 “(B) The Centers for Disease Control and
22 Prevention.

23 “(C) The National Institutes of Health.”.

1 **SEC. 5. ESTABLISHMENT OF OFFICE IN DEPARTMENT OF**
2 **HEALTH AND HUMAN SERVICES TO ADMIN-**
3 **ISTER TITLE III OF DEFENSE PRODUCTION**
4 **ACT OF 1950.**

5 (a) IN GENERAL.—Title III of the Defense Produc-
6 tion Act of 1950 (50 U.S.C. 4531 et seq.) is amended by
7 adding at the end the following:

8 **“SEC. 305. ESTABLISHMENT OF OFFICE IN DEPARTMENT OF**
9 **HEALTH AND HUMAN SERVICES.**

10 “(a) IN GENERAL.—There is established in the Office
11 of the Assistant Secretary for Preparedness and Response
12 of the Department of Health and Human Services an of-
13 fice (in this section referred to as the ‘office’) to be respon-
14 sible for planning for the use of, reporting on, and imple-
15 mentation of authorities of the Department under this
16 title and other provisions of this Act.

17 “(b) PANDEMIC PREPAREDNESS AND RESPONSE.—
18 In planning for the use of and implementing authorities
19 under subsection (a), the office shall use highly targeted
20 economic incentives authorized under this Act to boost the
21 manufacturing of critical public health resources that are
22 vital to effective pandemic preparedness and response.

23 “(c) HEAD OF OFFICE.—

24 “(1) APPOINTMENT.—The Secretary of Health
25 and Human Services shall appoint an official of the

1 Department, at the level of Deputy Assistant Sec-
2 retary or the equivalent, to be the head of the office.

3 “(2) DEFENSE PRODUCTION ACT COMMITTEE
4 REPRESENTATIVE.—The head of the office ap-
5 pointed under paragraph (1) shall serve as the rep-
6 resentative of the Department of Health and Human
7 Services on the Defense Production Act Committee
8 under section 722.

9 “(d) WAIVER OF CERTAIN REQUIREMENTS.—The re-
10 quirements of sections 301(d)(1)(A), 302(d)(1), and sub-
11 paragraphs (B) and (C) of section 303(a)(6) are waived
12 for purposes of the use of authorities under this Act by
13 the office.

14 “(e) REPORT REQUIRED.—Not less frequently than
15 annually, the head of the office shall submit to Congress,
16 and make available on a publicly accessible internet
17 website of the office, a report that includes—

18 “(1) a summary of the work and plans of the
19 office to expand productive capacity and supply re-
20 sponsibilities under this Act during the year pre-
21 ceding submission of the report;

22 “(2) an assessment of the elements of the in-
23 dustrial base and technology base in the United
24 States;

1 “(3) recommendations for appropriate remedial
2 actions under this Act or regulations prescribed to
3 carry out this Act to supply the emerging tech-
4 nologies needed to achieve robust pandemic pre-
5 paredness and response;

6 “(4) recommendations for legislation, regula-
7 tions, executive orders, or other action by the Fed-
8 eral Government necessary to improve the use of the
9 authorities provided by this Act;

10 “(5) a summary of the findings and rec-
11 ommendations for improving information sharing be-
12 tween departments, agencies, and independent estab-
13 lishments of the Federal Government relating to all
14 aspects of this Act; and

15 “(6) any additional findings or recommenda-
16 tions the office considers appropriate.

17 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as may be
19 necessary for the establishment of the office.”.

20 (b) CONFORMING AMENDMENT.—Section
21 722(b)(1)(A) of the Defense Production Act of 1950 (50
22 U.S.C. 4567(b)(1)(A)) is amended by inserting “except as
23 specified in section 305(c)(2),” before “the head of”.

1 **SEC. 6. REPORT ON USE OF DEFENSE PRODUCTION ACT OF**
2 **1950 AUTHORITIES TO RESPOND TO COVID-19**
3 **PANDEMIC.**

4 (a) IN GENERAL.—Not less frequently than once a
5 month during the period described in subsection (b), the
6 Defense Production Act Committee established under sec-
7 tion 722 of the Defense Production Act of 1950 (50
8 U.S.C. 4567) shall submit to the appropriate congres-
9 sional committees and make available on a publicly acces-
10 sible internet website a report—

11 (1) describing activities carried out under titles
12 I and III of that Act related to efforts to respond
13 to the coronavirus disease 2019 (commonly referred
14 to as “COVID-19”) pandemic; and

15 (2) assessing the effectiveness of interagency
16 coordination and the use of resources to respond to
17 the pandemic.

18 (b) PERIOD DESCRIBED.—The period described in
19 this subsection is the period—

20 (1) beginning on the date of the enactment of
21 this Act; and

22 (2) ending on the date on which the national
23 emergency declared under the National Emergencies
24 Act (50 U.S.C. 1601 et seq.) with respect to
25 COVID-19 terminates.

1 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-
2 FINED.—In this section, the term “appropriate congres-
3 sional committees” means the Committee on Banking,
4 Housing, and Urban Affairs of the Senate and the Com-
5 mittee on Financial Services of the House of Representa-
6 tives

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