

111TH CONGRESS
1ST SESSION

S. 1677

AN ACT

To reauthorize the Defense Production Act of 1950, 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Defense Production Act Reauthorization of 2009”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reauthorization of Defense Production Act of 1950.
- Sec. 3. Declaration of policy.
- Sec. 4. Priority in contracts and orders.
- Sec. 5. Designation of energy as a strategic and critical material.
- Sec. 6. Strengthening domestic capability.
- Sec. 7. Expansion of productive capacity and supply.
- Sec. 8. Definitions.
- Sec. 9. Voluntary agreements and plans of action for national defense.
- Sec. 10. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports.
- Sec. 11. Defense Production Act Committee.
- Sec. 12. Annual report on impact of offsets.

6 **SEC. 2. REAUTHORIZATION OF DEFENSE PRODUCTION ACT**
7 **OF 1950.**

8 (a) TERMINATION OF ACT.—

9 (1) TERMINATION.—Section 717 of the Defense
10 Production Act of 1950 (50 U.S.C. App. 2166) is
11 amended—

12 (A) by striking subsections (a) and (b) and
13 inserting the following:

14 “(a) Title I (except section 104), title III, and title
15 VII (except sections 707, 708, and 721) shall terminate
16 on September 30, 2014, except that all authority extended
17 under title III on or after the date of enactment of the
18 Defense Production Act Reauthorization of 2009 shall be
19 effective for any fiscal year only to such extent or in such

1 amounts as are provided in advance in appropriations
2 Acts.

3 “(b) Notwithstanding subsection (a), any agency cre-
4 ated under a provision of law that is terminated under
5 subsection (a) may continue in existence, for purposes of
6 liquidation, for a period not to exceed 6 months, beginning
7 on the date of termination of the provision authorizing the
8 creation of such agency under subsection (a).”; and

9 (B) in subsection (c), by striking the sec-
10 ond undesignated paragraph.

11 (2) REPEALS.—Titles II, IV, V, and VI of the
12 Defense Production Act of 1950 (50 U.S.C. App.
13 2151 et seq., 2101 et seq., 2121 et seq., and 2131
14 et seq.) are repealed.

15 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
16 711 of the Defense Production Act of 1950 (50 U.S.C.
17 App. 2161) is amended—

18 (1) in subsection (a)—

19 (A) in the first sentence, by striking “(in-
20 cluding” and all that follows through “) by”
21 and inserting “by”; and

22 (B) by striking “(a) AUTHORIZATION.—
23 Except as provided in subsection (b), there”
24 and inserting “There”; and

25 (2) by striking subsection (b).

1 **SEC. 3. DECLARATION OF POLICY.**

2 (a) FINDINGS.—Section 2 of the Defense Production
3 Act of 1950 (50 U.S.C. App. 2062) is amended to read
4 as follows:

5 **“SEC. 2. DECLARATION OF POLICY.**

6 “(a) FINDINGS.—Congress finds that—

7 “(1) the security of the United States is de-
8 pendent on the ability of the domestic industrial
9 base to supply materials and services for the na-
10 tional defense and to prepare for and respond to
11 military conflicts, natural or man-caused disasters,
12 or acts of terrorism within the United States;

13 “(2) to ensure the vitality of the domestic in-
14 dustrial base, actions are needed—

15 “(A) to promote industrial resources pre-
16 paredness in the event of domestic or foreign
17 threats to the security of the United States;

18 “(B) to support continuing improvements
19 in industrial efficiency and responsiveness;

20 “(C) to provide for the protection and res-
21 toration of domestic critical infrastructure oper-
22 ations under emergency conditions; and

23 “(D) to respond to actions taken outside of
24 the United States that could result in reduced
25 supplies of strategic and critical materials, in-
26 cluding energy, necessary for national defense

1 and the general economic well-being of the
2 United States;

3 “(3) in order to provide for the national secu-
4 rity, the national defense preparedness effort of the
5 United States Government requires—

6 “(A) preparedness programs to respond to
7 both domestic emergencies and international
8 threats to national defense;

9 “(B) measures to improve the domestic in-
10 dustrial base for national defense;

11 “(C) the development of domestic produc-
12 tive capacity to meet—

13 “(i) essential national defense needs
14 that can result from emergency conditions;
15 and

16 “(ii) unique technological require-
17 ments; and

18 “(D) the diversion of certain materials and
19 facilities from ordinary use to national defense
20 purposes, when national defense needs cannot
21 otherwise be satisfied in a timely fashion;

22 “(4) to meet the requirements referred to in
23 this subsection, this Act provides the President with
24 an array of authorities to shape national defense
25 preparedness programs and to take appropriate

1 steps to maintain and enhance the domestic indus-
2 trial base;

3 “(5) in order to ensure national defense pre-
4 paredness, it is necessary and appropriate to assure
5 the availability of domestic energy supplies for na-
6 tional defense needs;

7 “(6) to further assure the adequate mainte-
8 nance of the domestic industrial base, to the max-
9 imum extent possible, domestic energy supplies
10 should be augmented through reliance on renewable
11 energy sources (including solar, geothermal, wind,
12 and biomass sources), more efficient energy storage
13 and distribution technologies, and energy conserva-
14 tion measures;

15 “(7) much of the industrial capacity that is re-
16 lied upon by the United States Government for mili-
17 tary production and other national defense purposes
18 is deeply and directly influenced by—

19 “(A) the overall competitiveness of the in-
20 dustrial economy of the United States; and

21 “(B) the ability of industries in the United
22 States, in general, to produce internationally
23 competitive products and operate profitably
24 while maintaining adequate research and devel-

1 opment to preserve competitiveness with respect
2 to military and civilian production; and

3 “(8) the inability of industries in the United
4 States, especially smaller subcontractors and sup-
5 pliers, to provide vital parts and components and
6 other materials would impair the ability to sustain
7 the Armed Forces of the United States in combat
8 for longer than a short period.

9 “(b) STATEMENT OF POLICY.—It is the policy of the
10 United States that—

11 “(1) to ensure the adequacy of productive ca-
12 pacity and supply, Federal departments and agen-
13 cies that are responsible for national defense acquisi-
14 tion should continuously assess the capability of the
15 domestic industrial base to satisfy production re-
16 quirements under both peacetime and emergency
17 conditions, specifically evaluating the availability of
18 adequate production sources, including subcontract-
19 ors and suppliers, materials, skilled labor, and pro-
20 fessional and technical personnel;

21 “(2) every effort should be made to foster co-
22 operation between the defense and commercial sec-
23 tors for research and development and for acquisi-
24 tion of materials, components, and equipment;

1 “(3) plans and programs to carry out the pur-
2 poses of this Act should be undertaken with due con-
3 sideration for promoting efficiency and competition;

4 “(4) in providing United States Government fi-
5 nancial assistance under this Act to correct a domes-
6 tic industrial base shortfall, the President should
7 give consideration to the creation or maintenance of
8 production sources that will remain economically via-
9 ble after such assistance has ended;

10 “(5) authorities under this Act should be used
11 to reduce the vulnerability of the United States to
12 terrorist attacks, and to minimize the damage and
13 assist in the recovery from terrorist attacks that
14 occur in the United States;

15 “(6) in order to ensure productive capacity in
16 the event of an attack on the United States, the
17 United States Government should encourage the ge-
18 ographic dispersal of industrial facilities in the
19 United States to discourage the concentration of
20 such productive facilities within limited geographic
21 areas that are vulnerable to attack by an enemy of
22 the United States;

23 “(7) to ensure that essential national defense
24 requirements are met, consideration should be given

1 to stockpiling strategic materials, to the extent that
2 such stockpiling is economical and feasible; and

3 “(8) in the construction of any industrial facil-
4 ity owned by the United States Government, in the
5 rendition of any financial assistance by the United
6 States Government for the construction, expansion,
7 or improvement of any industrial facility, and in the
8 production of goods and services, under this Act or
9 any other provision of law, each department and
10 agency of the United States Government should
11 apply, under the coordination of the Federal Emer-
12 gency Management Agency, when practicable and
13 consistent with existing law and the desirability for
14 maintaining a sound economy, the principle of geo-
15 graphic dispersal of such facilities in the interest of
16 national defense.”.

17 **SEC. 4. PRIORITY IN CONTRACTS AND ORDERS.**

18 Section 101 of the Defense Production Act of 1950
19 (50 U.S.C. App. 2071) is amended by adding at the end
20 the following:

21 “(d) The head of each Federal agency to which the
22 President delegates authority under this section shall—

23 “(1) not later than 270 days after the date of
24 enactment of the Defense Production Act Reauthor-
25 ization of 2009, issue final rules, in accordance with

1 section 553 of title 5, United States Code, that es-
 2 tablish standards and procedures by which the prior-
 3 ities and allocations authority under this section is
 4 used to promote the national defense, under both
 5 emergency and nonemergency conditions; and

6 “(2) as appropriate and to the extent prac-
 7 ticable, consult with the heads of other Federal
 8 agencies to develop a consistent and unified Federal
 9 priorities and allocations system.”.

10 **SEC. 5. DESIGNATION OF ENERGY AS A STRATEGIC AND**
 11 **CRITICAL MATERIAL.**

12 Section 106 of the Defense Production Act of 1950
 13 (50 U.S.C. App. 2076) is amended—

14 (1) by striking “such designation” and all that
 15 follows through “(1)” and inserting “such designa-
 16 tion”;

17 (2) by striking “; or” and inserting a period;
 18 and

19 (3) by striking paragraph (2).

20 **SEC. 6. STRENGTHENING DOMESTIC CAPABILITY.**

21 Section 107 of the Defense Production Act of 1950
 22 (50 U.S.C. App. 2077) is amended—

23 (1) in subsection (a)—

24 (A) by inserting “restore,” after “mod-
 25 ernize,”; and

1 (B) by inserting “materials,” after
 2 “items,”; and
 3 (2) in subsection (b)—
 4 (A) by striking paragraph (1);
 5 (B) by redesignating paragraphs (2) and
 6 (3) as paragraphs (1) and (2), respectively; and
 7 (C) in paragraph (1), as so redesignated,
 8 by striking “or critical technology items” and
 9 inserting “, critical technology items, essential
 10 materials, and industrial resources”.

11 **SEC. 7. EXPANSION OF PRODUCTIVE CAPACITY AND SUP-**
 12 **PLY.**

13 Title III of the Defense Production Act of 1950 (50
 14 U.S.C. App. 2091 et seq.) is amended to read as follows:

15 **“TITLE III—EXPANSION OF PRO-**
 16 **DUCTIVE CAPACITY AND SUP-**
 17 **PLY**

18 **“SEC. 301. PRESIDENTIAL AUTHORIZATION FOR THE NA-**
 19 **TIONAL DEFENSE.**

20 “(a) EXPEDITING PRODUCTION AND DELIVERIES OR
 21 SERVICES.—

22 “(1) AUTHORIZED ACTIVITIES.—To reduce cur-
 23 rent or projected shortfalls of industrial resources,
 24 critical technology items, or essential materials need-
 25 ed for national defense purposes, subject to such

1 regulations as the President may prescribe, the
2 President may authorize a guaranteeing agency to
3 provide guarantees of loans by private institutions
4 for the purpose of financing any contractor, subcon-
5 tractor, provider of critical infrastructure, or other
6 person in support of production capabilities or sup-
7 plies that are deemed by the guaranteeing agency to
8 be necessary to create, maintain, expedite, expand,
9 protect, or restore production and deliveries or serv-
10 ices essential to the national defense.

11 “(2) PRESIDENTIAL DETERMINATIONS RE-
12 QUIRED.—Except during a period of national emer-
13 gency declared by Congress or the President, a loan
14 guarantee may be entered into under this section
15 only if the President determines that—

16 “(A) the loan guarantee is for an activity
17 that supports the production or supply of an in-
18 dustrial resource, critical technology item, or
19 material that is essential for national defense
20 purposes;

21 “(B) without a loan guarantee, credit is
22 not available to the loan applicant under rea-
23 sonable terms or conditions sufficient to finance
24 the activity;

1 “(C) the loan guarantee is the most cost
2 effective, expedient, and practical alternative for
3 meeting the needs of the Federal Government;

4 “(D) the prospective earning power of the
5 loan applicant and the character and value of
6 the security pledged provide a reasonable assur-
7 ance of repayment of the loan to be guaranteed;

8 “(E) the loan to be guaranteed bears inter-
9 est at a rate determined by the Secretary of the
10 Treasury to be reasonable, taking into account
11 the then-current average yield on outstanding
12 obligations of the United States with remaining
13 periods of maturity comparable to the maturity
14 of the loan;

15 “(F) the loan agreement for the loan to be
16 guaranteed provides that no provision of the
17 loan agreement may be amended or waived
18 without the consent of the fiscal agent of the
19 United States for the guarantee; and

20 “(G) the loan applicant has provided or
21 will provide—

22 “(i) an assurance of repayment, as de-
23 termined by the President; and

24 “(ii) security—

1 “(I) in the form of a performance
2 bond, insurance, collateral, or other
3 means acceptable to the fiscal agent
4 of the United States; and

5 “(II) in an amount equal to not
6 less than 20 percent of the amount of
7 the loan.

8 “(3) LIMITATIONS ON LOANS.—Loans under
9 this section may be—

10 “(A) made or guaranteed under the au-
11 thority of this section only to the extent that an
12 appropriations Act—

13 “(i) provides, in advance, budget au-
14 thority for the cost of such guarantees, as
15 defined in section 502 of the Federal Cred-
16 it Reform Act of 1990 (2 U.S.C. 661a);
17 and

18 “(ii) establishes a limitation on the
19 total loan principal that may be guaran-
20 teed; and

21 “(B) made without regard to the limita-
22 tions of existing law, other than section 1341 of
23 title 31, United States Code.

24 “(b) FISCAL AGENTS OF THE UNITED STATES.—

1 “(1) IN GENERAL.—Any Federal agency or any
2 Federal reserve bank, when designated by the Presi-
3 dent, is hereby authorized to act, on behalf of any
4 guaranteeing agency, as fiscal agent of the United
5 States in the making of such contracts of guarantee
6 and in otherwise carrying out the purposes of this
7 section.

8 “(2) FUNDS.—All such funds as may be nec-
9 essary to enable any fiscal agent described in para-
10 graph (1) to carry out any guarantee made by it on
11 behalf of any guaranteeing agency shall be supplied
12 and disbursed by or under authority from such guar-
13 anteeing agency.

14 “(3) LIMIT ON LIABILITY.—No fiscal agent de-
15 scribed in paragraph (1) shall have any responsi-
16 bility or accountability, except as agent in taking
17 any action pursuant to or under authority of this
18 section.

19 “(4) REIMBURSEMENTS.—Each fiscal agent de-
20 scribed in paragraph (1) shall be reimbursed by each
21 guaranteeing agency for all expenses and losses in-
22 curred by such fiscal agent in acting as agent on be-
23 half of such guaranteeing agency, including, notwith-
24 standing any other provision of law, attorneys’ fees
25 and expenses of litigation.

1 “(c) OVERSIGHT.—

2 “(1) IN GENERAL.—All actions and operations
3 of fiscal agents under authority of or pursuant to
4 this section shall be subject to the supervision of the
5 President, and to such regulations as the President
6 may prescribe.

7 “(2) OTHER AUTHORITY.—The President is au-
8 thorized to prescribe—

9 “(A) either specifically or by maximum
10 limits or otherwise, rates of interest, guarantee
11 and commitment fees, and other charges which
12 may be made in connection with loans, dis-
13 counts, advances, or commitments guaranteed
14 by the guaranteeing agencies through fiscal
15 agents under this section; and

16 “(B) regulations governing the forms and
17 procedures (which shall be uniform to the ex-
18 tent practicable) to be utilized in connection
19 with such guarantees.

20 “(d) AGGREGATE GUARANTEE AMOUNTS.—

21 “(1) INDUSTRIAL RESOURCE AND CRITICAL
22 TECHNOLOGY SHORTFALLS.—

23 “(A) IN GENERAL.—If the making of any
24 guarantee or obligation of the Federal Govern-
25 ment under this title relating to a domestic in-

dustrial base shortfall would cause the aggregate outstanding amount of all guarantees for such shortfall to exceed \$50,000,000, any such guarantee may be made only—

“(i) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives in writing of the proposed guarantee; and

“(ii) after the 30-day period following the date on which notice under clause (i) is provided.

“(B) WAIVERS AUTHORIZED.—The requirements of subparagraph (A) may be waived—

“(i) during a period of national emergency declared by Congress or the President; or

“(ii) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

1 “(2) OTHER LIMITATIONS.—The authority con-
 2 ferred by this section shall not be used primarily to
 3 prevent the financial insolvency or bankruptcy of
 4 any person, unless—

5 “(A) the President certifies that the insol-
 6 vency or bankruptcy would have a direct and
 7 substantially adverse effect upon national de-
 8 fense production; and

9 “(B) a copy of the certification under sub-
 10 paragraph (A), together with a detailed jus-
 11 tification thereof, is transmitted to the Com-
 12 mittee on Banking, Housing, and Urban Affairs
 13 of the Senate and the Committee on Financial
 14 Services of the House of Representatives not
 15 later than 10 days prior to the exercise of that
 16 authority for such use.

17 **“SEC. 302. LOANS TO PRIVATE BUSINESS ENTERPRISES.**

18 “(a) LOAN AUTHORITY.—To reduce current or pro-
 19 jected shortfalls of industrial resources, critical technology
 20 items, or materials essential for the national defense, the
 21 President may make provision for loans to private busi-
 22 ness enterprises (including nonprofit research corporations
 23 and providers of critical infrastructure) for the creation,
 24 maintenance, expansion, protection, or restoration of ca-
 25 pacity, the development of technological processes, or the

1 production of essential materials, including the explo-
2 ration, development, and mining of strategic and critical
3 metals and minerals.

4 “(b) CONDITIONS OF LOANS.—Loans may be made
5 under this section on such terms and conditions as the
6 President deems necessary, except that—

7 “(1) financial assistance may be extended only
8 to the extent that it is not otherwise available from
9 private sources on reasonable terms; and

10 “(2) during periods of national emergency de-
11 clared by the Congress or the President, no such
12 loan may be made unless the President determines
13 that—

14 “(A) the loan is for an activity that sup-
15 ports the production or supply of an industrial
16 resource, critical technology item, or material
17 that is essential to the national defense;

18 “(B) without the loan, United States in-
19 dustry cannot reasonably be expected to provide
20 the needed capacity, technological processes, or
21 materials in a timely manner;

22 “(C) the loan is the most cost-effective, ex-
23 pedient, and practical alternative method for
24 meeting the need;

1 “(D) the prospective earning power of the
 2 loan applicant and the character and value of
 3 the security pledged provide a reasonable assur-
 4 ance of repayment of the loan in accordance
 5 with the terms of the loan, as determined by
 6 the President; and

7 “(E) the loan bears interest at a rate de-
 8 termined by the Secretary of the Treasury to be
 9 reasonable, taking into account the then-current
 10 average yield on outstanding obligations of the
 11 United States with remaining periods of matu-
 12 rity comparable to the maturity of the loan.

13 “(c) LIMITATIONS ON LOANS.—Loans under this sec-
 14 tion may be—

15 “(1) made or guaranteed under the authority of
 16 this section only to the extent that an appropriations
 17 Act—

18 “(A) provides, in advance, budget author-
 19 ity for the cost of such guarantees, as defined
 20 in section 502 of the Federal Credit Reform
 21 Act of 1990 (2 U.S.C. 661a); and

22 “(B) establishes a limitation on the total
 23 loan principal that may be guaranteed; and

1 “(2) made without regard to the limitations of
 2 existing law, other than section 1341 of title 31,
 3 United States Code.

4 “(d) AGGREGATE LOAN AMOUNTS.—

5 “(1) IN GENERAL.—If the making of any loan
 6 under this section to correct a shortfall would cause
 7 the aggregate outstanding amount of all obligations
 8 of the Federal Government under this title relating
 9 to such shortfall to exceed \$50,000,000, such loan
 10 may be made only—

11 “(A) if the President has notified the Com-
 12 mittee on Banking, Housing, and Urban Affairs
 13 of the Senate and the Committee on Financial
 14 Services of the House of Representatives, in
 15 writing, of the proposed loan; and

16 “(B) after the 30-day period following the
 17 date on which notice under subparagraph (A) is
 18 provided.

19 “(2) WAIVERS AUTHORIZED.—The require-
 20 ments of paragraph (1) may be waived—

21 “(A) during a period of national emergency
 22 declared by the Congress or the President; and

23 “(B) upon a determination by the Presi-
 24 dent, on a nondelegable basis, that a specific
 25 loan is necessary to avert an industrial resource

1 or critical technology shortfall that would se-
2 verely impair national defense capability.

3 **“SEC. 303. OTHER PRESIDENTIAL ACTION AUTHORIZED.**

4 “(a) IN GENERAL.—

5 “(1) IN GENERAL.—To create, maintain, pro-
6 tect, expand, or restore domestic industrial base ca-
7 pabilities essential for the national defense, the
8 President may make provision—

9 “(A) for purchases of or commitments to
10 purchase an industrial resource or a critical
11 technology item, for Government use or resale;

12 “(B) for the encouragement of exploration,
13 development, and mining of critical and stra-
14 tegic materials, and other materials;

15 “(C) for the development of production ca-
16 pabilities; and

17 “(D) for the increased use of emerging
18 technologies in security program applications
19 and the rapid transition of emerging tech-
20 nologies—

21 “(i) from Government-sponsored re-
22 search and development to commercial ap-
23 plications; and

1 “(ii) from commercial research and
 2 development to national defense applica-
 3 tions.

4 “(2) TREATMENT OF CERTAIN AGRICULTURAL
 5 COMMODITIES.—A purchase for resale under this
 6 subsection shall not include that part of the supply
 7 of an agricultural commodity which is domestically
 8 produced, except to the extent that such domestically
 9 produced supply may be purchased for resale for in-
 10 dustrial use or stockpiling.

11 “(3) TERMS OF SALES.—No commodity pur-
 12 chased under this subsection shall be sold at less
 13 than—

14 “(A) the established ceiling price for such
 15 commodity, except that minerals, metals, and
 16 materials shall not be sold at less than the es-
 17 tablished ceiling price, or the current domestic
 18 market price, whichever is lower; or

19 “(B) if no ceiling price has been estab-
 20 lished, the higher of—

21 “(i) the current domestic market price
 22 for such commodity; or

23 “(ii) the minimum sale price estab-
 24 lished for agricultural commodities owned
 25 or controlled by the Commodity Credit

1 Corporation, as provided in section 407 of
 2 the Agricultural Act of 1949 (7 U.S.C.
 3 1427).

4 “(4) DELIVERY DATES.—No purchase or com-
 5 mitment to purchase any imported agricultural com-
 6 modity shall specify a delivery date which is more
 7 than 1 year after the date of termination of this sec-
 8 tion.

9 “(5) PRESIDENTIAL DETERMINATIONS.—Ex-
 10 cept as provided in paragraph (7), the President
 11 may not execute a contract under this subsection un-
 12 less the President determines that—

13 “(A) the industrial resource, material, or
 14 critical technology item is essential to the na-
 15 tional defense; and

16 “(B) without Presidential action under this
 17 section, United States industry cannot reason-
 18 ably be expected to provide the capability for
 19 the needed industrial resource, material, or crit-
 20 ical technology item in a timely manner.

21 “(6) NOTIFICATION TO CONGRESS OF SHORT-
 22 FALL.—

23 “(A) IN GENERAL.—Except as provided in
 24 paragraph (7), the President shall provide writ-
 25 ten notice to the Committee on Banking, Hous-

1 ing, and Urban Affairs of the Senate and the
2 Committee on Financial Services of the House
3 of Representatives of a domestic industrial base
4 shortfall prior to taking action under this sub-
5 section to remedy the shortfall. The notice shall
6 include the determinations made by the Presi-
7 dent under paragraph (5).

8 “(B) AGGREGATE AMOUNTS.—If the tak-
9 ing of any action under this subsection to cor-
10 rect a domestic industrial base shortfall would
11 cause the aggregate outstanding amount of all
12 such actions for such shortfall to exceed
13 \$50,000,000, the action or actions may be
14 taken only after the 30-day period following the
15 date on which the Committee on Banking,
16 Housing, and Urban Affairs of the Senate and
17 the Committee on Financial Services of the
18 House of Representatives have been notified in
19 writing of the proposed action.

20 “(7) WAIVERS AUTHORIZED.—The require-
21 ments of paragraphs (1) through (6) may be
22 waived—

23 “(A) during a period of national emergency
24 declared by the Congress or the President; or

1 “(B) upon a determination by the Presi-
2 dent, on a nondelegable basis, that action is
3 necessary to avert an industrial resource or
4 critical technology item shortfall that would se-
5 verely impair national defense capability.

6 “(b) EXEMPTION FOR CERTAIN LIMITATIONS.—Sub-
7 ject to the limitations in subsection (a), purchases and
8 commitments to purchase and sales under subsection (a)
9 may be made without regard to the limitations of existing
10 law (other than section 1341 of title 31, United States
11 Code), for such quantities, and on such terms and condi-
12 tions, including advance payments, and for such periods,
13 but not extending beyond a date that is not more than
14 10 years from the date on which such purchase, purchase
15 commitment, or sale was initially made, as the President
16 deems necessary, except that purchases or commitments
17 to purchase involving higher than established ceiling prices
18 (or if no such established ceiling prices exist, currently
19 prevailing market prices) or anticipated loss on resale shall
20 not be made, unless it is determined that supply of the
21 materials could not be effectively increased at lower prices
22 or on terms more favorable to the Government, or that
23 such purchases are necessary to assure the availability to
24 the United States of overseas supplies.

25 “(c) PRESIDENTIAL FINDINGS.—

1 “(1) IN GENERAL.—The President may take
2 the actions described in paragraph (2), if the Presi-
3 dent finds that—

4 “(A) under generally fair and equitable
5 ceiling prices, for any raw or nonprocessed ma-
6 terial, there will result a decrease in supplies
7 from high-cost sources of such material, and
8 that the continuation of such supplies is nec-
9 essary to carry out the objectives of this title;
10 or

11 “(B) an increase in cost of transportation
12 is temporary in character and threatens to im-
13 pair maximum production or supply in any area
14 at stable prices of any materials.

15 “(2) SUBSIDY PAYMENTS AUTHORIZED.—Upon
16 a finding under paragraph (1), the President may
17 make provision for subsidy payments on any such
18 domestically produced material, other than an agri-
19 cultural commodity, in such amounts and in such
20 manner (including purchases of such material and
21 its resale at a loss), and on such terms and condi-
22 tions, as the President determines to be necessary to
23 ensure that supplies from such high-cost sources are
24 continued, or that maximum production or supply in

1 such area at stable prices of such materials is main-
 2 tained, as the case may be.

3 “(d) INCIDENTAL AUTHORITY.—The procurement
 4 power granted to the President by this section shall in-
 5 clude the power to transport and store and have processed
 6 and refined any materials procured under this section.

7 “(e) INSTALLATION OF EQUIPMENT IN INDUSTRIAL
 8 FACILITIES.—

9 “(1) INSTALLATION AUTHORIZED.—If the
 10 President determines that such action will aid the
 11 national defense, the President is authorized—

12 “(A) to procure and install additional
 13 equipment, facilities, processes or improvements
 14 to plants, factories, and other industrial facili-
 15 ties owned by the Federal Government;

16 “(B) to procure and install equipment
 17 owned by the Federal Government in plants,
 18 factories, and other industrial facilities owned
 19 by private persons;

20 “(C) to provide for the modification or ex-
 21 pansion of privately owned facilities, including
 22 the modification or improvement of production
 23 processes, when taking actions under section
 24 301, 302, or this section; and

1 “(D) to sell or otherwise transfer equip-
 2 ment owned by the Federal Government and in-
 3 stalled under this subsection to the owners of
 4 such plants, factories, or other industrial facili-
 5 ties.

6 “(2) INDEMNIFICATION.—The owner of any
 7 plant, factory, or other industrial facility that re-
 8 ceives equipment owned by the Federal Government
 9 under this section shall agree—

10 “(A) to waive any claim against the United
 11 States under section 107 or 113 of the Com-
 12 prehensive Environmental Response, Compensa-
 13 tion, and Liability Act of 1980 (42 U.S.C. 9607
 14 and 9613); and

15 “(B) to indemnify the United States
 16 against any claim described in paragraph (1)
 17 made by a third party that arises out of the
 18 presence or use of equipment owned by the
 19 Federal Government.

20 “(f) EXCESS METALS, MINERALS, AND MATE-
 21 RIALS.—

22 “(1) IN GENERAL.—Notwithstanding any other
 23 provision of law to the contrary, metals, minerals,
 24 and materials acquired pursuant to this section
 25 which, in the judgment of the President, are excess

1 to the needs of programs under this Act, shall be
 2 transferred to the National Defense Stockpile estab-
 3 lished by the Strategic and Critical Materials Stock
 4 Piling Act (50 U.S.C. 98 et seq.), when the Presi-
 5 dent deems such action to be in the public interest.

6 “(2) TRANSFERS AT NO CHARGE.—Transfers
 7 made pursuant to this subsection shall be made
 8 without charge against or reimbursement from funds
 9 appropriated for the purposes of the Strategic and
 10 Critical Materials Stock Piling Act (50 U.S.C. 98 et
 11 seq.), except that costs incident to such transfer,
 12 other than acquisition costs, shall be paid or reim-
 13 bursed from such funds.

14 “(g) SUBSTITUTES.—When, in the judgement of the
 15 President, it will aid the national defense, the President
 16 may make provision for the development of substitutes for
 17 strategic and critical materials, critical components, crit-
 18 ical technology items, and other industrial resources.

19 **“SEC. 304. DEFENSE PRODUCTION ACT FUND.**

20 “(a) ESTABLISHMENT OF FUND.—There is estab-
 21 lished in the Treasury of the United States a separate
 22 fund to be known as the ‘Defense Production Act Fund’
 23 (in this section referred to as the ‘Fund’).

24 “(b) MONEYS IN FUND.—There shall be credited to
 25 the Fund—

1 “(1) all moneys appropriated for the Fund, as
2 authorized by section 711; and

3 “(2) all moneys received by the Fund on trans-
4 actions entered into pursuant to section 303.

5 “(c) USE OF FUND.—The Fund shall be available to
6 carry out the provisions and purposes of this title, subject
7 to the limitations set forth in this Act and in appropria-
8 tions Acts.

9 “(d) DURATION OF FUND.—Moneys in the Fund
10 shall remain available until expended.

11 “(e) FUND BALANCE.—The Fund balance at the
12 close of each fiscal year shall not exceed \$750,000,000,
13 excluding any moneys appropriated to the Fund during
14 that fiscal year or obligated funds. If, at the close of any
15 fiscal year, the Fund balance exceeds \$750,000,000, the
16 amount in excess of \$750,000,000 shall be paid into the
17 general fund of the Treasury.

18 “(f) FUND MANAGER.—The President shall des-
19 ignate a Fund manager. The duties of the Fund manager
20 shall include—

21 “(1) determining the liability of the Fund in ac-
22 cordance with subsection (g);

23 “(2) ensuring the visibility and accountability of
24 transactions engaged in through the Fund; and

1 “(3) reporting to the Congress each year re-
 2 garding activities of the Fund during the previous
 3 fiscal year.

4 “(g) LIABILITIES AGAINST FUND.—When any agree-
 5 ment entered into pursuant to this title after December
 6 31, 1991, imposes any contingent liability upon the United
 7 States, such liability shall be considered an obligation
 8 against the Fund.”.

9 **SEC. 8. DEFINITIONS.**

10 Section 702 of the Defense Production Act of 1950
 11 (50 U.S.C. App. 2152) is amended—

12 (1) in paragraph (1), by striking “military
 13 equipment identified by the Secretary of Defense”
 14 and inserting “equipment identified by the Presi-
 15 dent”;

16 (2) by striking paragraphs (2), (4), (9), and
 17 (18);

18 (3) by redesignating paragraph (3) as para-
 19 graph (2);

20 (4) by inserting after paragraph (2), as so re-
 21 designated, the following:

22 “(3) CRITICAL TECHNOLOGY.—The term ‘crit-
 23 ical technology’ includes any technology designated
 24 by the President to be essential to the national de-
 25 fense.”;

(5) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively;

(6) in paragraph (6), as so redesignated—

(A) in the paragraph heading, by striking “DEFENSE”;

(B) by striking “domestic defense” and inserting “domestic”; and

(C) by striking “graduated mobilization,”;

(7) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively;

(8) by inserting after paragraph (9), as so redesignated, the following:

“(10) GUARANTEEING AGENCY.—The term ‘guaranteeing agency’ means a department or agency of the United States engaged in procurement for the national defense.

“(11) HOMELAND SECURITY.—The term ‘homeland security’ includes efforts—

“(A) to prevent terrorist attacks within the United States;

“(B) to reduce the vulnerability of the United States to terrorism;

“(C) to minimize damage from a terrorist attack in the United States; and

1 “(D) to recover from a terrorist attack in
2 the United States.”;

3 (9) in paragraph (12), by striking “capacity”
4 and inserting “base”;

5 (10) in paragraph (14), by striking “military
6 assistance to any foreign nation” and inserting
7 “military or critical infrastructure assistance to any
8 foreign nation, homeland security”; and

9 (11) in paragraph (16)—

10 (A) in subparagraph (A), by striking “or”
11 at the end;

12 (B) in subparagraph (B), by striking the
13 period and inserting a semicolon; and

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

15 “(C) the movement of individuals and
16 property by all modes of civil transportation; or

17 “(D) other national defense programs and
18 activities.”.

19 **SEC. 9. VOLUNTARY AGREEMENTS AND PLANS OF ACTION**
20 **FOR NATIONAL DEFENSE.**

21 Section 708 of the Defense Production Act of 1950
22 (50 U.S.C. App. 2158) is amended—

23 (1) in subsection (c)—

24 (A) in paragraph (1), by striking “defense
25 of the United States” and all that follows

1 through the period and inserting “national de-
 2 fense.”; and

3 (B) by adding at the end the following:

4 “(3) Upon a determination by the President, on a
 5 nondelegable basis, that a specific voluntary agreement or
 6 plan of action is necessary to meet national defense re-
 7 quirements resulting from an event that degrades or de-
 8 stroys critical infrastructure—

9 “(A) an individual that has been delegated au-
 10 thority under paragraph (1) with respect to such
 11 agreement or plan shall not be required to consult
 12 with the Attorney General or the Federal Trade
 13 Commission under paragraph (2)(B); and

14 “(B) the President shall publish a rule in ac-
 15 cordance with subsection (e)(2)(B) and publish no-
 16 tice in accordance with subsection (e)(3)(B) with re-
 17 spect to such agreement or plan as soon as is prac-
 18 ticable under the circumstances.”;

19 (2) in subsection (f)(2)—

20 (A) by striking “two years” each place
 21 that term appears and inserting “5 years”; and

22 (B) by striking “two-year” and inserting
 23 “5-year”; and

24 (3) by striking subsection (n) and inserting the
 25 following:

1 “(n) EXEMPTION FROM ADVISORY COMMITTEE ACT
 2 PROVISIONS.—Notwithstanding any other provision of
 3 law, the Federal Advisory Committee Act (5 U.S.C. App.)
 4 and any other provision of Federal law relating to advisory
 5 committees shall not apply to—

6 “(1) the consultations referred to in subsection
 7 (c)(1); or

8 “(2) any activity conducted under a voluntary
 9 agreement or plan of action approved pursuant to
 10 this section that complies with the requirements of
 11 this section.”.

12 **SEC. 10. EMPLOYMENT OF PERSONNEL; APPOINTMENT**
 13 **POLICIES; NUCLEUS EXECUTIVE RESERVE;**
 14 **USE OF CONFIDENTIAL INFORMATION BY EM-**
 15 **PLOYEES; PRINTING AND DISTRIBUTION OF**
 16 **REPORTS.**

17 Section 710 of the Defense Production Act of 1950
 18 (50 U.S.C. App. 2160) is amended—

19 (1) in subsection (b)—

20 (A) in paragraph (2), by striking clause
 21 (iii);

22 (B) by striking paragraph (4);

23 (C) by redesignating paragraphs (5)
 24 through (8) as paragraphs (4) through (7), re-
 25 spectively; and

1 (D) in paragraph (6), as so redesignated,
 2 by striking “At least” and all that follows
 3 through “survey” and inserting “The Director
 4 of the Office of Personnel Management shall
 5 carry out a biennial survey of”;

6 (2) in subsection (c), by striking the third sen-
 7 tence;

8 (3) in subsection (d), by striking “needed;” and
 9 all that follows through the period and inserting
 10 “needed.”; and

11 (4) in subsection (e)—

12 (A) in the first sentence, by striking
 13 “emergency” and inserting “national defense
 14 emergency, as determined by the President”;
 15 and

16 (B) by striking the third sentence.

17 **SEC. 11. DEFENSE PRODUCTION ACT COMMITTEE.**

18 Section 722 of the Defense Production Act of 1950
 19 (50 U.S.C. App. 2171) is amended to read as follows:

20 **“SEC. 722. DEFENSE PRODUCTION ACT COMMITTEE.**

21 “(a) COMMITTEE ESTABLISHED.—There is estab-
 22 lished the Defense Production Act Committee (in this sec-
 23 tion referred to as the ‘Committee’), which shall advise
 24 the President on the effective use of the authority under
 25 this Act by the departments, agencies, and independent

1 establishments of the Federal Government to which the
2 President has delegated authority under this Act.

3 “(b) MEMBERSHIP.—

4 “(1) IN GENERAL.—The members of the Com-
5 mittee shall be—

6 “(A) the head of each Federal agency to
7 which the President has delegated authority
8 under this Act; and

9 “(B) the Chairperson of the Council of
10 Economic Advisors.

11 “(2) CHAIRPERSON.—The President shall des-
12 ignate 1 member of the Committee as the Chair-
13 person of the Committee.

14 “(c) EXECUTIVE DIRECTOR.—

15 “(1) IN GENERAL.—The President shall ap-
16 point an Executive Director of the Defense Produc-
17 tion Act Committee (in this section referred to as
18 the ‘Executive Director’), who shall—

19 “(A) be responsible to the Chairperson of
20 the Committee; and

21 “(B) carry out such activities relating to
22 the Committee as the Chairperson may deter-
23 mine.

1 “(2) APPOINTMENT.—The appointment by the
2 President shall not be subject to the advice and con-
3 sent of the Senate.

4 “(3) COMPENSATION.—For pay periods begin-
5 ning on or after the date on which each Chairperson
6 is appointed, funds for the pay of the Executive Di-
7 rector shall be paid from appropriations to the sala-
8 ries and expenses account of the department or
9 agency of the Chairperson of the Committee. The
10 Executive Director shall be compensated at a rate of
11 pay equivalent to that of a Deputy Assistant Sec-
12 retary (or a comparable position) of the Federal
13 agency of the Chairperson of the Committee.

14 “(d) REPORT.—Not later than the end of the first
15 quarter of each calendar year, the Committee shall submit
16 to the Committee on Banking, Housing, and Urban Af-
17 fairs of the Senate and the Committee on Financial Serv-
18 ices of the House of Representatives a report signed by
19 each member of the Committee that contains—

20 “(1) a review of the authority under this Act of
21 each department, agency, or independent establish-
22 ment of the Federal Government to which the Presi-
23 dent has delegated authority under this Act;

24 “(2) recommendations for the effective use of
25 the authority described in paragraph (1) in a man-

1 ner consistent with the statement of policy under
2 section 2(b);

3 “(3) recommendations for legislation, regula-
4 tions, executive orders, or other action by the Fed-
5 eral Government necessary to improve the use of the
6 authority described in paragraph (1); and

7 “(4) recommendations for improving informa-
8 tion sharing between departments, agencies, and
9 independent establishments of the Federal Govern-
10 ment relating to all aspects of the authority de-
11 scribed in paragraph (1).

12 “(e) FEDERAL ADVISORY COMMITTEE ACT.—The
13 provisions of the Federal Advisory Committee Act (5
14 U.S.C. App.) shall not apply to the Committee.”.

15 **SEC. 12. ANNUAL REPORT ON IMPACT OF OFFSETS.**

16 (a) ANNUAL REPORT.—Title VII of the Defense Pro-
17 duction Act of 1950 (50 U.S.C. App. 2151 et seq.) is
18 amended by adding at the end the following:

19 **“SEC. 723. ANNUAL REPORT ON IMPACT OF OFFSETS.**

20 “(a) REPORT REQUIRED.—

21 “(1) IN GENERAL.—The President shall submit
22 to the Committee on Banking, Housing, and Urban
23 Affairs of the Senate and the Committee on Finan-
24 cial Services of the House of Representatives, a de-
25 tailed annual report on the impact of offsets on the

1 defense preparedness, industrial competitiveness,
 2 employment, and trade of the United States.

3 “(2) DUTIES OF THE SECRETARY OF COM-
 4 MERCE.—The Secretary of Commerce (hereafter in
 5 this subsection referred to as the ‘Secretary’) shall—

6 “(A) prepare the report required by para-
 7 graph (1);

8 “(B) consult with the Secretary of De-
 9 fense, the Secretary of the Treasury, the Sec-
 10 retary of State, and the United States Trade
 11 Representative in connection with the prepara-
 12 tion of such report; and

13 “(C) function as the President’s Executive
 14 Agent for carrying out this section.

15 “(b) INTERAGENCY STUDIES AND RELATED DATA.—

16 “(1) PURPOSE OF REPORT.—Each report re-
 17 quired under subsection (a) shall identify the cumu-
 18 lative effects of offset agreements on—

19 “(A) the full range of domestic defense
 20 productive capability (with special attention
 21 paid to the firms serving as lower-tier sub-
 22 contractors or suppliers); and

23 “(B) the domestic defense technology base
 24 as a consequence of the technology transfers as-
 25 sociated with such offset agreements.

1 “(2) USE OF DATA.—Data developed or com-
2 piled by any agency while conducting any inter-
3 agency study or other independent study or analysis
4 shall be made available to the Secretary to facilitate
5 the execution of the Secretary’s responsibilities with
6 respect to trade offset and countertrade policy devel-
7 opment.

8 “(c) NOTICE OF OFFSET AGREEMENTS.—

9 “(1) IN GENERAL.—If a United States firm en-
10 ters into a contract for the sale of a weapon system
11 or defense-related item to a foreign country or for-
12 eign firm and such contract is subject to an offset
13 agreement exceeding \$5,000,000 in value, such firm
14 shall furnish to the official designated in the regula-
15 tions promulgated pursuant to paragraph (2) infor-
16 mation concerning such sale.

17 “(2) REGULATIONS.—The information to be
18 furnished under paragraph (1) shall be prescribed in
19 regulations promulgated by the Secretary. Such reg-
20 ulations shall provide protection from public disclo-
21 sure for such information, unless public disclosure is
22 subsequently specifically authorized by the firm fur-
23 nishing the information.

24 “(d) CONTENTS OF REPORT.—

1 “(1) IN GENERAL.—Each report under sub-
2 section (a) shall include—

3 “(A) a net assessment of the elements of
4 the industrial base and technology base covered
5 by the report;

6 “(B) recommendations for appropriate re-
7 medial action under the authority of this Act,
8 or other law or regulations;

9 “(C) a summary of the findings and rec-
10 ommendations of any interagency studies con-
11 ducted during the reporting period under sub-
12 section (b);

13 “(D) a summary of offset arrangements
14 concluded during the reporting period for which
15 information has been furnished pursuant to
16 subsection (c); and

17 “(E) a summary and analysis of any bilat-
18 eral and multilateral negotiations relating to
19 the use of offsets completed during the report-
20 ing period.

21 “(2) ALTERNATIVE FINDINGS OR REC-
22 OMMENDATIONS.—Each report required under this
23 section shall include any alternative findings or rec-
24 ommendations offered by any departmental Sec-

1 retary, agency head, or the United States Trade
2 Representative to the Secretary.

3 “(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIA-
4 TIONS.—The findings and recommendations of the reports
5 required by subsection (a), and any interagency reports
6 and analyses shall be considered by representatives of the
7 United States during bilateral and multilateral negotia-
8 tions to minimize the adverse effects of offsets.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

10 (1) DEFENSE PRODUCTION ACT AMENDMENTS
11 OF 1992.—Section 123(c)(1)(C) of the Defense Pro-
12 duction Act Amendments of 1992 (50 U.S.C. App.
13 2099 note) is amended by striking “section 309(a)
14 of the Defense Production Act of 1950 (50 U.S.C.
15 App. 2099(a))” and inserting “section 723(a) of the
16 Defense Production Act of 1950”.

17 (2) AMERICAN HOMEOWNERSHIP AND ECO-
18 NOMIC OPPORTUNITY ACT OF 2000.—Section 1102(2)
19 of the American Homeownership and Economic Op-
20 portunity Act of 2000 (31 U.S.C. 1113 note) is
21 amended by striking “309 of the Defense Production
22 Act of 1950 (50 U.S.C. App. 2099)” and inserting
23 “723 of the Defense Production Act of 1950”.

24 (3) DEFENSE PRODUCTION ACT AMENDMENTS
25 OF 2003.—Section 7(a) of the Defense Production

1 Act Amendments of 2003 (50 U.S.C. App. 2099
2 note) is amended by striking “section 309(a) of the
3 Defense Production Act of 1950 (50 U.S.C. App.
4 2099(a))” and inserting “section 723(a) of the De-
5 fense Production Act of 1950”.

Passed the Senate September 16, 2009.

Attest:

Secretary.

11TH CONGRESS
1ST SESSION

S. 1677

AN ACT

To reauthorize the Defense Production Act of
1950, and for other purposes.