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. ROUND) 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”.

S. 266

117th Congress
1st Session
SEC. 2. PRIORITIZATION OF CONTRACTS NECESSARY TO

PROMOTE PANDEMIC PREPAREDNESS AND

RESPONSE.

(a) In General.—Title I of the Defense Production

Act of 1950 (50 U.S.C. 4511 et seq.) is amended by in-

serting after section 101 the following:

"SEC. 101A. PRIORITIZATION OF CONTRACTS NECESSARY

TO PROMOTE PANDEMIC PREPAREDNESS

AND RESPONSE.

"(a) In General.—The Secretary of Health and

Human Services shall—

"(1) require that performance under contracts

or orders (other than contracts of employment) that

the Secretary deems necessary or appropriate to pro-

mote preparedness for and response to a pandemic

shall take priority over performance under any other

contract or order;

"(2) for the purpose of assuring such priority,

require acceptance and performance of such con-

tracts or orders in preference to other contracts or

orders by persons the Secretary finds to be capable

of their performance; and

"(3) allocate materials, services, and facilities in

such manner, upon such conditions, and to such ex-

tent as the Secretary shall deem necessary or appro-

priate to promote the public health."
“(b) USE OF AUTHORITY.—The powers granted by this section shall be used to control the general distribution of a material in the civilian market if the Secretary finds that—

“(1) such material is a scarce and critical material essential to public health; and

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

(b) CONFORMING AMENDMENTS.—The Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) is amended—

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

(2) in section 701(e) (50 U.S.C. 4551(e)), by inserting “or the Secretary of Health and Human Services makes a determination to exercise any authority to allocate any material pursuant to section 101A,” after “section 101,”.
SEC. 3. REPORTING OF ACTIONS TAKEN UNDER TITLE I OF

DEFENSE PRODUCTION ACT OF 1950 IN FEDERAL PROCUREMENT DATA SYSTEM.

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

“SEC. 109. REPORTING OF ACTIONS IN FEDERAL PROCUREMENT DATA SYSTEM.

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

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

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

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

“(e) USE OF FUND.—

“(1) IN GENERAL.—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

“(2) DISTRIBUTION.—The Fund manager designated under subsection (e) shall ensure that amounts in the Fund are fairly distributed to the office established under section 305 and all other Fed-
eral agencies with responsibility for carrying out the provisions and purposes of this title.”;

(2) by striking subsection (e);

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

(4) in subsection (e), as redesignated by paragraph (3)—

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

(B) in paragraph (3), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(4) coordinating with other Federal agencies to ensure that amounts in the Fund are made available to agencies other than the agency of the Fund manager, especially for public health programs.”;

and

(5) by adding at the end the following:

“(g) INTERAGENCY ROTATION PROGRAM.—

“(1) IN GENERAL.—The Secretary of Health and Human Services and the Secretary of Defense shall establish an interagency rotation program that provides for personnel of the components of the Department of Health and Human Services specified in paragraph (2) to take rotational assignments within
the Office of the Deputy Assistant Secretary of Defense for Industrial Policy, and for personnel of that Office to take rotational assignments within such components, for the purposes of—

“(A) strengthening working relationships between agencies;

“(B) promoting interagency experience;

and

“(C) ensuring the amounts in the Fund enable the use of highly tailored economic incentives to boost the manufacturing of critical public health resources that are vital to effective pandemic preparedness and response in the United States.

“(2) COMPONENTS SPECIFIED.—The components of the Department of Health and Human Services specified in this paragraph are the following:

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

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

“(C) The National Institutes of Health.”.
SEC. 5. ESTABLISHMENT OF OFFICE IN DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ADMINISTER TITLE III OF DEFENSE PRODUCTION ACT OF 1950.

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

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

“(a) IN GENERAL.—There is established in the Office of the Assistant Secretary for Preparedness and Response of the Department of Health and Human Services an office (in this section referred to as the ‘office’) to be responsible for planning for the use of, reporting on, and implementation of authorities of the Department under this title and other provisions of this Act.

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

“(c) HEAD OF OFFICE.—

“(1) APPOINTMENT.—The Secretary of Health and Human Services shall appoint an official of the
Department, at the level of Deputy Assistant Secretary or the equivalent, to be the head of the office.

“(2) Defense Production Act Committee Representative.—The head of the office appointed under paragraph (1) shall serve as the representative of the Department of Health and Human Services on the Defense Production Act Committee under section 722.

“(d) Waiver of Certain Requirements.—The requirements of sections 301(d)(1)(A), 302(d)(1), and sub-paragraphs (B) and (C) of section 303(a)(6) are waived for purposes of the use of authorities under this Act by the office.

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

“(1) a summary of the work and plans of the office to expand productive capacity and supply responsibilities under this Act during the year preceding submission of the report;

“(2) an assessment of the elements of the industrial base and technology base in the United States;
“(3) recommendations for appropriate remedial actions under this Act or regulations prescribed to carry out this Act to supply the emerging technologies needed to achieve robust pandemic preparedness and response;

“(4) recommendations for legislation, regulations, executive orders, or other action by the Federal Government necessary to improve the use of the authorities provided by this Act;

“(5) a summary of the findings and recommendations for improving information sharing between departments, agencies, and independent establishments of the Federal Government relating to all aspects of this Act; and

“(6) any additional findings or recommendations the office considers appropriate.

“(f) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary for the establishment of the office.”.

(b) Conforming Amendment.—Section 722(b)(1)(A) of the Defense Production Act of 1950 (50 U.S.C. 4567(b)(1)(A)) is amended by inserting “except as specified in section 305(c)(2),” before “the head of”.
SEC. 6. REPORT ON USE OF DEFENSE PRODUCTION ACT OF 1950 AUTHORITIES TO RESPOND TO COVID–19 PANDEMIC.

(a) IN GENERAL.—Not less frequently than once a month during the period described in subsection (b), the Defense Production Act Committee established under section 722 of the Defense Production Act of 1950 (50 U.S.C. 4567) shall submit to the appropriate congressional committees and make available on a publicly accessible internet website a report—

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

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

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

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

(2) ending on the date on which the national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to COVID–19 terminates.
(c) Appropriate Congressional Committees Defined.—In this section, the term “appropriate congressional committees” means the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.