

PUBLIC HEALTH EMERGENCY MEDICAL SUPPLIES
ENHANCEMENT ACT OF 2023

MAY 23, 2024.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1166]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1166) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Public Health Emergency Medical Supplies Enhancement Act of 2023”.

SEC. 2. PUBLIC HEALTH EMERGENCIES.

(a) **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”.

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

“SEC. 712. PUBLIC HEALTH EMERGENCIES.

“(a) **SCARCE AND CRITICAL MATERIALS.**—During a public health emergency, any 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 may be deemed by the President to be a scarce and critical material essential to the national defense for purposes of section 101 and otherwise meet the requirements of section 101(b), and funds available to implement this Act may be used for the purchase, production (including the construction, repair, and retrofitting of government-owned facilities as necessary), or distribution of such medical equipment or supplies.

“(b) EXERCISE OF TITLE I AUTHORITIES IN RELATION TO CONTRACTS BY STATE, LOCAL, OR TRIBAL GOVERNMENTS.—In exercising authorities under title I during a public health emergency, 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 or supplies described in subsection (a) 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 or supplies is made; or

“(B) the materials or supplies are otherwise allocated by the Federal Government under the authorities contained in this 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 or supplies ordered by such government; and

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

“(c) ENGAGEMENT WITH THE PRIVATE SECTOR.—

“(1) OUTREACH REPRESENTATIVE.—Consistent with the authorities in this title VII, 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, an individual to be known as the ‘Outreach Representative’ for any public health emergency. Such individual shall—

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

“(B) act as the Government-wide single point of contact during the public health emergency for outreach to manufacturing companies and their suppliers who may be interested in producing medical supplies or equipment, including the materials described under subsection (a).

“(2) ENCOURAGING PARTNERSHIPS.—During a public health emergency, 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 public health emergency, including through the exercise of the authorities delegated by the President under section 708.

“(d) ENHANCEMENT OF SUPPLY CHAIN PRODUCTION.—In exercising authority under title III during a public health emergency with respect to materials described in subsection (a), 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 subsection (a), if applicable, to the extent necessary for the national defense during the public health emergency.

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

“(1) IN GENERAL.—Not later than 90 days after the use of authorities under this Act with respect to a public health emergency, and every 120 days thereafter until the termination of such public health emergency, 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 with respect to the public health emergency.

“(2) CONTENTS.—Each report required under paragraph (1) 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));

“(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 this Act.

“(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 each report.

“(f) DEFINITIONS.—In this section:

“(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) PUBLIC HEALTH EMERGENCY.—The term ‘public health emergency’ means a public health emergency determined pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

“(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.”

(c) 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 section 712(b) of the Defense Production Act of 1950.

(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 section 712(b) of the Defense Production Act of 1950, consistent with the revisions made pursuant to paragraph (1).

SEC. 3. 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)) with respect to fiscal years 2023 and 2024 shall include the percentage of contracts awarded using funds to carry out the Defense Production Act of 1950 for each of the fiscal years 2023 and 2024, respectively, to small business concerns (as defined under section 702 of such Act).

PURPOSE AND SUMMARY

Introduced on February 24, 2023, by Representative Juan Vargas, H.R. 1166, the *Public Health Emergency Medical Supplies Enhancement Act of 2023*, amends sections of the Defense Production Act (DPA) (50 U.S.C. § 4501–4568) to, among other things, identify certain materials as scarce and critical during a public health emergency period. The bill would also authorize the prioritization of materials for the federal government to exclude state, local, or tribal purchases and creates an outreach representative position to work with the private sector. Finally, the bill would direct the President to issue a report on the authorities exercised and to provide briefings four months after the submission of the report.

BACKGROUND AND NEED FOR LEGISLATION

The DPA allows the President to require companies to prioritize and accept contracts to meet national defense requirements. The DPA also allows for the President to incentivize production through loans, loan guarantees, and purchase commitments. The COVID–19 pandemic underscored the potential for infectious disease to un-

dermine U.S. national security interests. Together with Operation Warp Speed, the Trump Administration used the DPA 18 times to accelerate the delivery of COVID-19 therapeutics and related equipment. H.R. 1166 is designed to ensure that materials essential for national defense are covered by the DPA during a public health emergency. The bill also provides clarity when federal purchases may appear to conflict with certain state, local, or tribal deliveries.

HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 1166: The Committee on Financial Services held a hearing on February 7, 2023, titled “Combatting the Economic Threat from China.”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on February 28, 2023, and ordered H.R. 1166 to be reported favorably to the House as amended by a recorded vote of 30 ayes to 2 nays (Record vote no. FC-23), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Vargas by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 1166 was ordered reported favorably to the House as amended by a recorded vote of 30 ayes to 2 nays (Record vote no. FC-23), a quorum being present.

Record vote no. FC- 23

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	X	—	—
Mr. Hill	X	—	—	Mrs. Velazquez	X	—	—
Mr. Lucas	—	—	—	Mr. Sherman	—	—	—
Mr. Sessions	—	—	—	Mr. Meeks	—	—	—
Mr. Posey	—	X	—	Mr. Scott	—	—	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	—	—	—
Mr. Hironaka	—	—	—	Mr. Green	X	—	—
Mrs. Wagner	X	—	—	Mr. Cleaver	—	—	—
Mr. Barr	X	—	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	—	—	Mr. Foster	X	—	—
Mr. Emmer	—	—	—	Mrs. Beatty	X	—	—
Mr. Loudermilk	—	—	—	Mr. Vargas	X	—	—
Mr. Mooney	X	—	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	—	—	Mr. Gonzalez	—	—	—
Mr. Rose	X	—	—	Mr. Casten	X	—	—
Mr. Steel	—	—	—	Ms. Pressley	X	—	—
Mr. Timmons	X	—	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	X	—	—	Mr. Torres	X	—	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	—	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	—	—	Mr. Nickel	—	—	—
Mr. Derales	—	—	—	Ms. Petersen	X	—	—
Mr. Flood	X	—	—				
Mr. Lawler	—	—	—				
Mr. Nunn	X	—	—				
Ms. DeLa Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	—	—	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 1166 is to require the identification of certain materials as scarce and critical during a public health emergency period. The bill would also authorize the prioritization of materials for the federal government to exclude state, local, or tribal purchases and creates an outreach representative position to work with the private sector.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 1166, Public Health Emergency Medical Supplies Enhancement Act of 2023			
As ordered reported by the House Committee on Financial Services on February 28, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Mandate Effects	
		Contains intergovernmental mandate?	Excluded from UMRA
		Contains private-sector mandate?	Excluded from UMRA
* = between zero and \$500,000.			

During the coronavirus pandemic the Administration—through a series of executive orders—used authorities under the Defense Production Act of 1950 (DPA) to require businesses to prioritize performance and delivery on contracts and orders from the federal government.¹ It also used the act’s authorities to support manufac-

¹ See, for example, “America’s Supply Chains,” Executive Order 14017, 86 Fed. Reg. 11849 (February 24, 2021), <https://tinyurl.com/bdhmc8kc>; “A Sustainable Public Health Supply Chain,” Executive Order 14001, 86 Fed. Reg. 7219 (January 21, 2021), <https://tinyurl.com/2pa3b7af>; “Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States,” Executive Order 13944, 85 Fed. Reg. 49929 (August 6, 2020), <https://tinyurl.com/yupmducj>; “Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19,” Executive Order 13911, 85 Fed. Reg. 18403 (March 27, 2020), <https://tinyurl.com/mr2p7c56>; and “Prioritizing and Allo-

turing of medical supplies and vaccines, fund projects to expand domestic production of personal protective equipment (PPE), and partner with private companies to distribute PPE.

H.R. 1166 would amend the DPA to specifically incorporate some of the effects of those orders. The bill also would authorize the Federal Emergency Management Agency (FEMA) to appoint an outreach representative to work with industry during public health emergencies. FEMA and the Department of Health and Human Services established a position that fulfilled that requirement as part of the Supply Chain Stabilization Task Force, which manages critical shortages of PPE, ventilators, and pharmaceutical materials by coordinating with industry partners. Because H.R. 1166 would codify current practices, CBO estimates that implementing those provisions would not affect the federal budget.

The bill also would require the Administration to report regularly to the Congress during public health emergencies, detailing its use of authorities under the DPA. On the basis of information about similar reports, CBO estimates that satisfying that requirement would cost less than \$500,000 over the 2023–2028 period; any spending would be subject to the availability of appropriated funds.

CBO has not reviewed H.R. 1166 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that the provisions of the Defense Production Act of 1950, as amended by the bill, would fall under that exclusion.

The CBO staff contacts for this estimate are Caroline Dorminey (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by Chad Chirico, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1973.

FEDERAL MANDATES STATEMENT

Pursuant to section 423 of the Unfunded Mandates Reform Act of 1995, the Committee adopts as its own estimate the Federal mandates as prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

cating Health and Medical Resources to Respond to the Spread of COVID–19,” Executive Order 13909, 85 Fed. Reg. 16227 (March 18, 2020), <https://tinyurl.com/bdehbd47>.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1: Short title

This Act may be cited as the “Public Health Emergency Medical Supplies Enhancement Act of 2023.”

Sec. 2: Public health emergencies

This section would amend the Defense Production Act (50 U.S.C. § 4501–4568) to identify certain materials as scarce and critical during an emergency period, as determined by Secretary of the Health and Human Services or the Secretary of Homeland Security. The bill also authorizes the prioritization of materials for the federal government to exclude state, local, or tribal purchases and creates an outreach representative position to work with the private sector.

Sec. 3: Report on activities involving small business

This section directs the President to issue a report on the authorities exercised and to provide briefings four months after the submission of the report.