

PUBLIC LAW 111-67—SEPT. 30, 2009

DEFENSE PRODUCTION ACT
REAUTHORIZATION OF 2009

Public Law 111–67
111th Congress

An Act

Sept. 30, 2009
[S. 1677]

Defense
Production Act
Reauthorization
of 2009.
50 USC
app. 2061 note.

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

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

(b) **TABLE OF CONTENTS.**—The table of contents for 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.

SEC. 2. REAUTHORIZATION OF DEFENSE PRODUCTION ACT OF 1950.

(a) **TERMINATION OF ACT.**—

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

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

“(a) Title I (except section 104), title III, and title VII (except sections 707, 708, and 721) shall terminate on September 30, 2014, except that all authority extended under title III on or after the date of enactment of the Defense Production Act Reauthorization of 2009 shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

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

(B) in subsection (c), by striking the second undesignated paragraph.

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 are repealed.

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

(1) in subsection (a)—

(A) in the first sentence, by striking “(including” and all that follows through “) by” and inserting “by”; and

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

(2) by striking subsection (b).

SEC. 3. DECLARATION OF POLICY.

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

“SEC. 2. DECLARATION OF POLICY.

“(a) FINDINGS.—Congress finds that—

“(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services for the national defense and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States;

“(2) to ensure the vitality of the domestic industrial base, actions are needed—

“(A) to promote industrial resources preparedness in the event of domestic or foreign threats to the security of the United States;

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

“(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions; and

“(D) to respond to actions taken outside of the United States that could result in reduced supplies of strategic and critical materials, including energy, necessary for national defense and the general economic well-being of the United States;

“(3) in order to provide for the national security, the national defense preparedness effort of the United States Government requires—

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

“(B) measures to improve the domestic industrial base for national defense;

“(C) the development of domestic productive capacity to meet—

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

“(ii) unique technological requirements; and

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

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

appropriate steps to maintain and enhance the domestic industrial base;

“(5) in order to ensure national defense preparedness, it is necessary and appropriate to assure the availability of domestic energy supplies for national defense needs;

“(6) to further assure the adequate maintenance of the domestic industrial base, to the maximum extent possible, domestic energy supplies should be augmented through reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures;

“(7) much of the industrial capacity that is relied upon by the United States Government for military production and other national defense purposes is deeply and directly influenced by—

“(A) the overall competitiveness of the industrial economy of the United States; and

“(B) the ability of industries in the United States, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve competitiveness with respect to military and civilian production; and

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

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

“(1) to ensure the adequacy of productive capacity and supply, Federal departments and agencies that are responsible for national defense acquisition should continuously assess the capability of the domestic industrial base to satisfy production requirements under both peacetime and emergency conditions, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;

“(2) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment;

“(3) plans and programs to carry out the purposes of this Act should be undertaken with due consideration for promoting efficiency and competition;

“(4) in providing United States Government financial assistance under this Act to correct a domestic industrial base shortfall, the President should give consideration to the creation or maintenance of production sources that will remain economically viable after such assistance has ended;

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

“(6) in order to ensure productive capacity in the event of an attack on the United States, the United States Government should encourage the geographic dispersal of industrial facilities in the United States to discourage the concentration

of such productive facilities within limited geographic areas that are vulnerable to attack by an enemy of the United States;

“(7) to ensure that essential national defense requirements are met, consideration should be given to stockpiling strategic materials, to the extent that such stockpiling is economical and feasible; and

“(8) in the construction of any industrial facility owned by the United States Government, in the rendition of any financial assistance by the United States Government for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this Act or any other provision of law, each department and agency of the United States Government should apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of geographic dispersal of such facilities in the interest of national defense.”.

SEC. 4. PRIORITY IN CONTRACTS AND ORDERS.

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

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

“(1) not later than 270 days after the date of enactment of the Defense Production Act Reauthorization of 2009, issue final rules, in accordance with section 553 of title 5, United States Code, that establish standards and procedures by which the priorities and allocations authority under this section is used to promote the national defense, under both emergency and nonemergency conditions; and

Deadline.
Regulations.

“(2) as appropriate and to the extent practicable, consult with the heads of other Federal agencies to develop a consistent and unified Federal priorities and allocations system.”.

Consultation.

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

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

(1) by striking “such designation” and all that follows through “(1)” and inserting “such designation”;

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

(3) by striking paragraph (2).

SEC. 6. STRENGTHENING DOMESTIC CAPABILITY.

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

(1) in subsection (a)—

(A) by inserting “restore,” after “modernize,”; and

(B) by inserting “materials,” after “items,”; and

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(C) in paragraph (1), as so redesignated, by striking “or critical technology items” and inserting “, critical technology items, essential materials, and industrial resources”.

SEC. 7. EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY.

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

**“TITLE III—EXPANSION OF
PRODUCTIVE CAPACITY AND SUPPLY**

50 USC
app. 2091.

**“SEC. 301. PRESIDENTIAL AUTHORIZATION FOR THE NATIONAL
DEFENSE.**

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

“(1) AUTHORIZED ACTIVITIES.—To reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes, subject to such regulations as the President may prescribe, the President may authorize a guaranteeing agency to provide guarantees of loans by private institutions for the purpose of financing any contractor, subcontractor, provider of critical infrastructure, or other person in support of production capabilities or supplies that are deemed by the guaranteeing agency to be necessary to create, maintain, expedite, expand, protect, or restore production and deliveries or services essential to the national defense.

“(2) PRESIDENTIAL DETERMINATIONS REQUIRED.—Except during a period of national emergency declared by Congress or the President, a loan guarantee may be entered into under this section only if the President determines that—

“(A) the loan guarantee is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential for national defense purposes;

“(B) without a loan guarantee, credit is not available to the loan applicant under reasonable terms or conditions sufficient to finance the activity;

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

“(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed;

“(E) the loan to be guaranteed bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan;

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

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

“(i) an assurance of repayment, as determined by the President; and

“(ii) security—

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

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

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

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

“(i) provides, in advance, budget authority for the cost of such guarantees, as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a); and

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

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

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

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

“(2) FUNDS.—All such funds as may be necessary to enable any fiscal agent described in paragraph (1) to carry out any guarantee made by it on behalf of any guaranteeing agency shall be supplied and disbursed by or under authority from such guaranteeing agency.

“(3) LIMIT ON LIABILITY.—No fiscal agent described in paragraph (1) shall have any responsibility or accountability, except as agent in taking any action pursuant to or under authority of this section.

“(4) REIMBURSEMENTS.—Each fiscal agent described in paragraph (1) shall be reimbursed by each guaranteeing agency for all expenses and losses incurred by such fiscal agent in acting as agent on behalf of such guaranteeing agency, including, notwithstanding any other provision of law, attorneys’ fees and expenses of litigation.

“(c) OVERSIGHT.—

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

“(2) OTHER AUTHORITY.—The President is authorized to prescribe—

“(A) either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through fiscal agents under this section; and

“(B) regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

“(d) AGGREGATE GUARANTEE AMOUNTS.—

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

“(A) IN GENERAL.—If the making of any guarantee or obligation of the Federal Government under this title relating to a domestic industrial 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—

Notification.

“(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.

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

Certification.

“(A) the President certifies that the insolvency or bankruptcy would have a direct and substantially adverse effect upon national defense production; and

Deadline.

“(B) a copy of the certification under subparagraph (A), together with a detailed justification thereof, is transmitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 10 days prior to the exercise of that authority for such use.

50 USC
app. 2092.

“SEC. 302. LOANS TO PRIVATE BUSINESS ENTERPRISES.

“(a) LOAN AUTHORITY.—To reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense, the President may make provision for loans to private business enterprises (including nonprofit research corporations and providers of critical infrastructure) for the creation, maintenance, expansion, protection, or restoration of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals.

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

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

“(2) during periods of national emergency declared by the Congress or the President, no such loan may be made unless the President determines that—

“(A) the loan is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

“(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

“(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

“(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan, as determined by the President; and

“(E) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

“(c) LIMITATIONS ON LOANS.—Loans under this section may be—

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

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

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

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

“(d) AGGREGATE LOAN AMOUNTS.—

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

“(A) 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 loan; and

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

“(2) WAIVERS AUTHORIZED.—The requirements of paragraph (1) may be waived—

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

“(B) upon a determination by the President, on a non-delegable basis, that a specific loan is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

Notification.

“SEC. 303. OTHER PRESIDENTIAL ACTION AUTHORIZED.

“(a) IN GENERAL.—

“(1) IN GENERAL.—To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

50 USC
app. 2093.

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

“(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

“(C) for the development of production capabilities; and

“(D) for the increased use of emerging technologies in security program applications and the rapid transition of emerging technologies—

“(i) from Government-sponsored research and development to commercial applications; and

“(ii) from commercial research and development to national defense applications.

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

“(3) TERMS OF SALES.—No commodity purchased under this subsection shall be sold at less than—

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

“(B) if no ceiling price has been established, the higher of—

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

“(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation, as provided in section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427).

“(4) DELIVERY DATES.—No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than 1 year after the date of termination of this section.

“(5) PRESIDENTIAL DETERMINATIONS.—Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

“(A) the industrial resource, material, or critical technology item is essential to the national defense; and

“(B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner.

“(6) NOTIFICATION TO CONGRESS OF SHORTFALL.—

“(A) IN GENERAL.—Except as provided in paragraph (7), the President shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the President under paragraph (5).

“(B) AGGREGATE AMOUNTS.—If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$50,000,000, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

“(7) WAIVERS AUTHORIZED.—The requirements of paragraphs (1) through (6) may be waived—

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

“(B) upon a determination by the President, on a non-delegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability.

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

“(c) PRESIDENTIAL FINDINGS.—

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

“(A) under generally fair and equitable ceiling prices, for any raw or nonprocessed material, there will result a decrease in supplies from high-cost sources of such material, and that the continuation of such supplies is necessary to carry out the objectives of this title; or

“(B) an increase in cost of transportation is temporary in character and threatens to impair maximum production or supply in any area at stable prices of any materials.

“(2) SUBSIDY PAYMENTS AUTHORIZED.—Upon a finding under paragraph (1), the President may make provision for subsidy payments on any such domestically produced material, other than an agricultural commodity, in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and conditions, as the President determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.

“(d) INCIDENTAL AUTHORITY.—The procurement power granted to the President by this section shall include the power to transport and store and have processed and refined any materials procured under this section.

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

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

“(A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;

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

“(C) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes, when taking actions under section 301, 302, or this section; and

“(D) to sell or otherwise transfer equipment owned by the Federal Government and installed under this subsection to the owners of such plants, factories, or other industrial facilities.

“(2) INDEMNIFICATION.—The owner of any plant, factory, or other industrial facility that receives equipment owned by the Federal Government under this section shall agree—

“(A) to waive any claim against the United States under section 107 or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 and 9613); and

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

“(f) EXCESS METALS, MINERALS, AND MATERIALS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to this section which, in the judgment of the President, are excess to the needs of programs under this Act, shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest.

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

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

“SEC. 304. DEFENSE PRODUCTION ACT FUND.50 USC
app. 2094.

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

“(b) MONEYS IN FUND.—There shall be credited to the Fund—
 “(1) all moneys appropriated for the Fund, as authorized by section 711; and

“ (2) all moneys received by the Fund on transactions entered into pursuant to section 303.

“(c) USE OF FUND.—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.

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

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

“(f) FUND MANAGER.—The President shall designate a Fund manager. The duties of the Fund manager shall include—

“ (1) determining the liability of the Fund in accordance with subsection (g);

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

“ (3) reporting to the Congress each year regarding activities of the Fund during the previous fiscal year.

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

SEC. 8. DEFINITIONS.

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

(1) in paragraph (1), by striking “military equipment identified by the Secretary of Defense” and inserting “equipment identified by the President”;

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

(3) by redesignating paragraph (3) as paragraph (2);

(4) by inserting after paragraph (2), as so redesignated, the following:

“(3) CRITICAL TECHNOLOGY.—The term ‘critical technology’ includes any technology designated by the President to be essential to the national defense.”;

(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

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

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

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

(11) in paragraph (16)—

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

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

(C) by adding at the end the following:

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

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

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

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

(1) in subsection (c)—

(A) in paragraph (1), by striking “defense of the United States” and all that follows through the period and inserting “national defense.”; and

(B) by adding at the end the following:

President.

“(3) Upon a determination by the President, on a nondelegable basis, that a specific voluntary agreement or plan of action is necessary to meet national defense requirements resulting from an event that degrades or destroys critical infrastructure—

“(A) an individual that has been delegated authority under paragraph (1) with respect to such agreement or plan shall not be required to consult with the Attorney General or the Federal Trade Commission under paragraph (2)(B); and

Publication.
Regulation.
Notice.

“(B) the President shall publish a rule in accordance with subsection (e)(2)(B) and publish notice in accordance with subsection (e)(3)(B) with respect to such agreement or plan as soon as is practicable under the circumstances.”;

(2) in subsection (f)(2)—

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

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

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

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

- “(1) the consultations referred to in subsection (c)(1); or
- “(2) any activity conducted under a voluntary agreement or plan of action approved pursuant to this section that complies with the requirements of this section.”.

SEC. 10. EMPLOYMENT OF PERSONNEL; APPOINTMENT POLICIES; NUCLEUS EXECUTIVE RESERVE; USE OF CONFIDENTIAL INFORMATION BY EMPLOYEES; PRINTING AND DISTRIBUTION OF REPORTS.

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

- (1) in subsection (b)—
 - (A) in paragraph (2), by striking clause (iii);
 - (B) by striking paragraph (4);
 - (C) by redesignating paragraphs (5) through (8) as paragraphs (4) through (7), respectively; and
 - (D) in paragraph (6), as so redesignated, by striking “At least” and all that follows through “survey” and inserting “The Director of the Office of Personnel Management shall carry out a biennial survey of”;
- (2) in subsection (c), by striking the third sentence;
- (3) in subsection (d), by striking “needed,” and all that follows through the period and inserting “needed.”; and
- (4) in subsection (e)—
 - (A) in the first sentence, by striking “emergency” and inserting “national defense emergency, as determined by the President”; and
 - (B) by striking the third sentence.

SEC. 11. DEFENSE PRODUCTION ACT COMMITTEE.

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

“SEC. 722. DEFENSE PRODUCTION ACT COMMITTEE.

“(a) COMMITTEE ESTABLISHED.—There is established the Defense Production Act Committee (in this section referred to as the ‘Committee’), which shall advise the President on the effective use of the authority under this Act by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority under this Act.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

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

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

“(2) CHAIRPERSON.—The President shall designate 1 member of the Committee as the Chairperson of the Committee.

President.

“(c) EXECUTIVE DIRECTOR.—

“(1) IN GENERAL.—The President shall appoint an Executive Director of the Defense Production Act Committee (in this section referred to as the ‘Executive Director’), who shall—

President.

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

“(B) carry out such activities relating to the Committee as the Chairperson may determine.

“(2) APPOINTMENT.—The appointment by the President shall not be subject to the advice and consent of the Senate.

“(3) COMPENSATION.—For pay periods beginning on or after the date on which each Chairperson is appointed, funds for the pay of the Executive Director shall be paid from appropriations to the salaries and expenses account of the department or agency of the Chairperson of the Committee. The Executive Director shall be compensated at a rate of pay equivalent to that of a Deputy Assistant Secretary (or a comparable position) of the Federal agency of the Chairperson of the Committee.

“(d) REPORT.—Not later than the end of the first quarter of each calendar year, the Committee shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report signed by each member of the Committee that contains—

“(1) a review of the authority under this Act of each department, agency, or independent establishment of the Federal Government to which the President has delegated authority under this Act;

“(2) recommendations for the effective use of the authority described in paragraph (1) in a manner consistent with the statement of policy under section 2(b);

“(3) recommendations for legislation, regulations, executive orders, or other action by the Federal Government necessary to improve the use of the authority described in paragraph (1); and

“(4) recommendations for improving information sharing between departments, agencies, and independent establishments of the Federal Government relating to all aspects of the authority described in paragraph (1).

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

SEC. 12. ANNUAL REPORT ON IMPACT OF OFFSETS.

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

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

“(a) REPORT REQUIRED.—

“(1) IN GENERAL.—The President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a detailed annual report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

“(2) DUTIES OF THE SECRETARY OF COMMERCE.—The Secretary of Commerce (hereafter in this subsection referred to as the ‘Secretary’) shall—

“(A) prepare the report required by paragraph (1);

“(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the

50 USC
app. 2172.
President.

Consultation.

United States Trade Representative in connection with the preparation of such report; and

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

“(b) INTERAGENCY STUDIES AND RELATED DATA.—

“(1) PURPOSE OF REPORT.—Each report required under subsection (a) shall identify the cumulative effects of offset agreements on—

“(A) the full range of domestic defense productive capability (with special attention paid to the firms serving as lower-tier subcontractors or suppliers); and

“(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

“(2) USE OF DATA.—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary to facilitate the execution of the Secretary’s responsibilities with respect to trade offset and countertrade policy development.

“(c) NOTICE OF OFFSET AGREEMENTS.—

“(1) IN GENERAL.—If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

“(2) REGULATIONS.—The information to be furnished under paragraph (1) shall be prescribed in regulations promulgated by the Secretary. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information.

“(d) CONTENTS OF REPORT.—

“(1) IN GENERAL.—Each report under subsection (a) shall include—

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

“(B) recommendations for appropriate remedial action under the authority of this Act, or other law or regulations;

“(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (b);

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

“(E) a summary and analysis of any bilateral and multilateral negotiations relating to the use of offsets completed during the reporting period.

“(2) ALTERNATIVE FINDINGS OR RECOMMENDATIONS.—Each report required under this section shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary.

“(e) UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.—The findings and recommendations of the reports required by subsection

(a), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(2) AMERICAN HOMEOWNERSHIP AND ECONOMIC OPPORTUNITY ACT OF 2000.—Section 1102(2) of the American Homeownership and Economic Opportunity Act of 2000 (31 U.S.C. 1113 note) is amended by striking “309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099)” and inserting “723 of the Defense Production Act of 1950”.

(3) DEFENSE PRODUCTION ACT AMENDMENTS OF 2003.—Section 7(a) of the Defense Production Act Amendments of 2003 (50 U.S.C. App. 2099 note) is amended by striking “section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a))” and inserting “section 723(a) of the Defense Production Act of 1950”.

Approved September 30, 2009.

LEGISLATIVE HISTORY—S. 1677:

CONGRESSIONAL RECORD, Vol. 155 (2009):

Sept. 16, considered and passed Senate.

Sept. 23, considered and passed House.

