

EX. ORD. NO. 13922. DELEGATING AUTHORITY UNDER THE DEFENSE PRODUCTION ACT TO THE CHIEF EXECUTIVE OFFICER OF THE UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION TO RESPOND TO THE COVID-19 OUTBREAK

Ex. Ord. No. 13922, May 14, 2020, 85 F.R. 30583, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*) (the “Act”), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. Policy. In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak) [50 U.S.C. 1621 note], I declared a national emergency recognizing the threat that the novel (new) coronavirus known as SARS-CoV-2 poses to our Nation’s healthcare systems. In recognizing the public health risk, I noted that on March 11, 2020, the World Health Organization announced that the outbreak of COVID-19 (the disease caused by SARS-CoV-2) can be characterized as a pandemic.

To ensure that our country has the capacity, capability, and strong and resilient domestic industrial base necessary to respond to the COVID-19 outbreak, it is the policy of the United States to further expand domestic production of strategic resources needed to respond to the COVID-19 outbreak, including strengthening relevant supply chains within the United States and its territories. It is important to use all resources available to the United States, including executive departments and agencies (agencies) with expertise in loan support for private institutions. Accordingly, I am delegating authority under title III of the Act [50 U.S.C. 4531 *et seq.*] to make loans, make provision for purchases and commitments to purchase, and take additional actions to create, maintain, protect, expand, and restore the domestic industrial base capabilities, including supply chains within the United States and its territories (“domestic supply chains”), needed to respond to the COVID-19 outbreak.

SEC. 2. Delegation of Authority Under Title III of the Act. (a) Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness) [50 U.S.C. 4553 note], and in addition to the delegation of authority in Executive Order 13911 of March 27, 2020 (Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19) [50 U.S.C. 4511 note], the Chief Executive Officer of the United States International Development Finance Corporation (DFC) is delegated the authority of the President conferred by sections 302 and 303 of the Act (50 U.S.C. 4532 and 4533), and the authority to implement the Act in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560).

(b) The Chief Executive Officer of the DFC may use the authority under sections 302 and 303 of the Act, in consultation with the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the heads of other agencies as he deems appropriate, for the domestic production of strategic resources needed to respond to the COVID-19 outbreak, or to strengthen any relevant domestic supply chains.

(c) The loan authority delegated by this order is limited to loans that create, maintain, protect, expand, or restore domestic industrial base capabilities supporting:

(i) the national response and recovery to the COVID-19 outbreak; or

(ii) the resiliency of any relevant domestic supply chains.

(d) Loans extended using the authority delegated by this order shall be made in accordance with the principles and guidelines outlined in OMB Circular A-11, OMB Circular A-129, and the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661 *et seq.*).

(e) The Chief Executive Officer of the DFC shall adopt appropriate rules and regulations as may be necessary to implement this order.

SEC. 3. Termination. The delegation of authority in this order shall expire upon termination of the 2-year period during which the requirements described in section 302(c)(1) of the Act (50 U.S.C. 4532(c)(1)) are waived pursuant to title III of division B of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) [see Legislative Waiver of Loan Limitations note set out under section 4531 of this title].

SEC. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 4533. 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—

(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 1427 of title 7.

(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, on a nondelegable basis, determines, with appropriate explanatory material and in writing, that—

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

(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; and

(C) purchases, purchase commitments, or other action pursuant to this section are the most cost effective, expedient, and practical alternative method for meeting the need.

(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.

(C) Limitation

If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, no such action or actions may be taken, unless such action or actions are authorized to exceed such amount by an Act of Congress.

(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 nondelegable 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), 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 subchapter; 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 4531 of this title, 4532 of this title, 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 9607 or 9613 of title 42; 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 chapter, 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.

(Sept. 8, 1950, ch. 932, title III, §303, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2013;

amended Pub. L. 113-172, §4(a), Sept. 26, 2014, 128 Stat. 1897.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(1), was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (f), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, §2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§98 et seq.) of chapter 5 of this title. For complete classification of this Act to the Code, see section 98 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2093 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 303 of act Sept. 8, 1950, ch. 932, title III, 64 Stat. 801; July 31, 1951, ch. 275, title I, §103(a), 65 Stat. 133; June 30, 1953, ch. 171, §§5, 6, 67 Stat. 130; Aug. 9, 1955, ch. 655, §3, 69 Stat. 580; June 29, 1956, ch. 474, §2, 70 Stat. 408; Pub. L. 88-343, §2, June 30, 1964, 78 Stat. 235; Pub. L. 92-325, §1, June 30, 1972, 86 Stat. 390; Pub. L. 94-273, §2(29), Apr. 21, 1976, 90 Stat. 376; Pub. L. 96-41, §3(c), July 30, 1979, 93 Stat. 325; Pub. L. 96-294, title I, §104(d), June 30, 1980, 94 Stat. 618; Pub. L. 98-265, §§3(c), 4(c), Apr. 17, 1984, 98 Stat. 150, 151; Pub. L. 102-558, title I, §121(c), (d), Oct. 28, 1992, 106 Stat. 4204, 4206; Pub. L. 107-47, §4(3), Oct. 5, 2001, 115 Stat. 260, related to purchase of raw materials and installation of equipment, prior to the general amendment of title III of this Act by Pub. L. 111-67.

AMENDMENTS

2014—Subsec. (a)(5). Pub. L. 113-172, §4(a)(1)(A), substituted “, on a non-delegable basis, determines, with appropriate explanatory material and in writing,” for “determines” in introductory provisions.

Subsec. (a)(5)(C). Pub. L. 113-172, §4(a)(1)(B)–(D), added subpar. (C).

Subsec. (a)(6)(C). Pub. L. 113-172, §4(a)(2), added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-172, §4(b), Sept. 26, 2014, 128 Stat. 1897, provided that: “Section 303(a)(6)(C) of the Defense Production Act of 1950 [50 U.S.C. 4533(a)(6)(C)], as added by subsection (a)(2), shall not apply to a project undertaken pursuant to a determination made before the date of the enactment of this Act [Sept. 26, 2014].”

INCREASING ACCESS TO MATERIALS NECESSARY FOR NATIONAL SECURITY AND PANDEMIC RECOVERY

Requirement described in subsec. (a)(6)(B) of this section not applicable during the 1-year period beginning on Mar. 27, 2020, and requirement described in subsec. (a)(6)(C) of this section not applicable during the 2-year period beginning on Mar. 27, 2020, see section 4017 of

Pub. L. 116-136, set out as a note under section 4532 of this title.

AUTHORIZATION TO TAKE ACTIONS TO CORRECT THE INDUSTRIAL RESOURCE SHORTFALL FOR HIGH-PURITY BERYLLIUM METAL

Pub. L. 111-84, div. A, title VIII, §842, Oct. 28, 2009, 123 Stat. 2418, provided that: “Notwithstanding any limitation in section 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2093) [now 50 U.S.C. 4533], an action may be taken under such section to correct an industrial resource shortfall or domestic industrial base shortfall for high-purity beryllium metal if such action does not cause the aggregate outstanding amount of all such actions for such shortfall to exceed ‘\$85,000,000.’”

RESOURCE SHORTFALL FOR RADIATION-HARDENED ELECTRONICS

Pub. L. 108-195, §3, Dec. 19, 2003, 117 Stat. 2892, provided that:

“(a) **IN GENERAL.**—Notwithstanding the limitation contained in [former] section 303(a)(6)(C) of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093(a)(6)(C)), the President may take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed \$200,000,000.

“(b) **REPORT BY THE SECRETARY.**—Before the end of the 6-month period beginning on the date of the enactment of this Act [Dec. 19, 2003], the Secretary of Defense shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing—

“(1) the current state of the domestic industrial base for radiation-hardened electronics;

“(2) the projected requirements of the Department of Defense for radiation-hardened electronics;

“(3) the intentions of the Department of Defense for the industrial base for radiation-hardened electronics; and

“(4) the plans of the Department of Defense for use of providers of radiation-hardened electronics beyond the providers with which the Department had entered into contractual arrangements under the authority of the Defense Production Act of 1950 [50 U.S.C. 4501 et seq.], as of the date of the enactment of this Act.”

Pub. L. 107-314, div. A, title VIII, §829, Dec. 2, 2002, 116 Stat. 2618, provided that: “Notwithstanding the limitation in [former] section 303(a)(6)(C) of the Defense Production Act of 1950 ([former] 50 U.S.C. App. 2093(a)(6)(C)), action or actions may be taken under section 303 of that Act to correct the industrial resource shortfall for radiation-hardened electronics, if such actions do not cause the aggregate outstanding amount of all such actions to exceed \$106,000,000.”

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under this section delegated to Chief Executive Officer of the United States International Development Finance Corporation, see section 2 of Ex. Ord. No. 13922, May 14, 2020, 85 F.R. 30583, set out as a note under section 4532 of this title.

Authority of President under this section with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and the Secretary of Homeland Security, see section 2 of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18403, set out as a note under section 4511 of this title.

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

For delegation of certain authority of President under this section, see sections 303(a), 304, 305(b), and 306-308 of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, 16655, set out as a note under section 4553 of this title.

EXECUTIVE WAIVER OF LIMITATIONS

Requirements of subsec. (a)(1) to (6) of this section waived during the national emergency declared by Proc. No. 9994, Mar. 13, 2020, 85 F.R. 15337, set out as a note under section 1621 of this title, see section 2(c) of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18404, set out as a note under section 4511 of this title.

§ 4534. Defense Production Act Fund

(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 4561 of this title; and

(2) all moneys received by the Fund on transactions entered into pursuant to section 4533 of this title.

(c) Use of Fund

The Fund shall be available to carry out the provisions and purposes of this subchapter, subject to the limitations set forth in this chapter 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 subchapter after December 31, 1991, imposes any contingent liability upon the United States, such liability shall be considered an obligation against the Fund.

(Sept. 8, 1950, ch. 932, title III, §304, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2017.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.