

DEFENSE PRODUCTION ACT AMENDMENTS OF 2001

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JULY 30, 2001.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

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

R E P O R T

[To accompany H.R. 2510]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2510) to extend the expiration date of the Defense Production Act of 1950, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2510, the “Defense Production Act Amendments of 2001” extends the effective termination date for expiring sections of the Defense Production Act of 1950 (DPA) by three years, from September 30, 2001, to September 30, 2004. The legislation provides for the

continued authorization of appropriations to carry out title III functions, and makes a number of technical corrections to allow for proper sectional cross references, consistent term usage throughout the Act, and corrects references to the House Committee on Financial Services.

#### BACKGROUND AND NEED FOR LEGISLATION

The Defense Production Act was enacted in 1950 to mobilize U.S. productive capacity after the outbreak of the Korean War. The Act authorizes the utilization of economic tools to provide prompt, adequate and uninterrupted supplies of industrial resources to satisfy both national security needs and needs arising from civil emergencies. Dramatically scaled back from its original form, the DPA is periodically amended to extend the expiration date of its critical authorities and modernize those authorities to respond to changing preparedness needs.

Unless the Act is reauthorized, the President may find himself without these important authorities in a time of need. For instance, the DPA expired on September 30, 1990 during Operation: Desert Shield. In order to give the President needed authority during this time of crisis, Congress passed an emergency extension of the Act on October 20, 1990, which was followed by a longer, 3-year extension.

The Federal Emergency Management Administration (FEMA), on behalf of the Administration, sent a request for proposed legislation to the House Committee on Financial Services on June 29, 2001. The legislation was introduced by request on July 17, 2001.

#### HEARINGS

The Subcommittee on Domestic Monetary Policy, Technology, and Economic Growth held a hearing on the reauthorization of the Defense Production Act of 1950 on June 13, 2001. The subcommittee received testimony from the Departments' of Defense, Commerce, Energy, and the Federal Emergency Management Administration.

#### COMMITTEE CONSIDERATION

On July 25, 2001, the Committee met in open session and ordered H.R. 2510 reported to the House, without amendment, with a favorable recommendation by a voice vote, a quorum being present.

#### 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 motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote. The following amendments were considered:

An amendment by Mr. Sherman, no. 1, changing the length of the reauthorization from 3 years to 2 years, was not agreed to by a record vote of 17 yeas and 34 nays (Record vote no. 5). The names of Members voting for and against follow:

YEAS	NAYS
Mr. Paul	Mr. Oxley
Mr. Frank	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. King
Mr. Gutierrez	Mr. Royce
Mr. Watt of North Carolina	Mr. Lucas of Oklahoma
Ms. Carson of Indiana	Mr. Ney
Mr. Sherman	Mrs. Kelly
Mr. Meeks of New York	Mr. Gillmor
Ms. Lee	Mr. Cox
Mr. Inslee	Mr. Weldon of Florida
Ms. Schakowsky	Mr. Ryun of Kansas
Mr. Moore	Mr. Riley
Mr. Gonzalez	Mr. Ose
Mrs. Jones of Ohio	Mrs. Biggert
Mr. Capuano	Mr. Green of Wisconsin
Mr. Hinojosa	Mr. Toomey
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. LaFalce
	Mrs. Maloney of New York
	Mr. Ackerman
	Mr. Maloney of Connecticut
	Mr. Mascara
	Mr. Lucas of Kentucky
	Mr. Shows
	Mr. Crowley
	Mr. Israel
	Mr. Ross

An amendment by Mr. Sherman, no. 2 (as modified by unanimous consent), authorizing the President to establish price controls for retail electricity in Western States, was not agreed to by a record vote of 25 yeas and 28 nays (Record vote no. 6). The names of Members voting for and against follow:

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. Castle
Mrs. Maloney of New York	Mr. King
Mr. Gutierrez	Mr. Lucas of Oklahoma
Mr. Watt of North Carolina	Mr. Ney
Ms. Hooley of Oregon	Mrs. Kelly
Ms. Carson of Indiana	Mr. Paul
Mr. Sherman	Mr. Gillmor
Mr. Meeks of New York	Mr. Cox
Ms. Lee	Mr. Weldon of Florida
Mr. Mascara	Mr. Ryun of Kansas

Mr. Inslee	Mr. Riley
Ms. Schakowsky	Mr. Ose
Mr. Moore	Mrs. Biggert
Mr. Gonzalez	Mr. Green of Wisconsin
Mrs. Jones of Ohio	Mr. Toomey
Mr. Capuano	Mr. Gary G. Miller of California
Mr. Ford	Mr. Cantor
Mr. Hinojosa	Mr. Grucci
Mr. Shows	Ms. Hart
Mr. Crowley	Mrs. Capito
Mr. Israel	Mr. Rogers of Michigan
Mr. Ross	Mr. Tiberi
	Mr. Bentsen
	Mr. Maloney of Connecticut
	Mr. Lucas of Kentucky

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The legislation will extend and improve the President's emergency powers under the Defense Production Act of 1950.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 27, 2001.*

Hon. MICHAEL G. OXLEY,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared to enclosed cost estimate for H.R. 2510, the Defense Production Act Amendments of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sam Papenfuss (for federal costs) and R. Williams Thomas (for the private-sector impact).

Sincerely,

STEVEN M. LIBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 2510—Defense Production Act Amendments of 2001*

H.R. 2510 would extend the authorities of the Defense Production Act of 1950 (DPA) for an additional three years through September 30, 2004, and would authorize all necessary appropriations for that period. The DPA provides the President the authority to require preferential performance on contracts and orders to meet approved national defense requirements; and to allocate materials, services and facilities as necessary to promote the national defense in a major national emergency (Title I); authorizes loan guarantees, direct loans, and purchase guarantees for those goods necessary for national defense (Title III); and allows the President to void international mergers that would adversely affect national security (Title VII). These authorities are set to expire on September 30, 2001. CBO estimates that implementing H.R. 2510 would cost about \$85 million over the 2002–2006 period, assuming appropriation of the necessary amounts. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill would authorize the appropriation of such sums as necessary for direct loans and loan guarantees under Title III to correct for shortfalls in domestic industrial capacity. In recent years, the Department of Defense (DoD) has used the authority for purchase guarantees—that is, the authority to commit to buying a specific quantity of a defense good if a manufacturer cannot sell it elsewhere. Appropriations for purchase guarantees have averaged about \$20 million a year over the 1986–2001 period, ranging from \$29 million in 1986 to \$100 million in 1994 to \$3 million in 2001. No money was appropriated for this purpose in 1992, 1993, or over the 1996–1999 period. The Administration has requested an appropriation of \$50 million for 2002. Because of the sharp variations in annual funding, specific yearly amounts for the indefinite authorization are difficult to project.

Based on information from DoD and the historical average over the past 16 years, CBO estimates that extending the authorization would require about \$90 million in appropriations for the three-year period covered by the bill. Based on historical spending pat-

terns, CBO estimates outlays from that funding would total less than \$75 million over the 2002–2006 period. In addition, the administrative support to carry out the DPA would require appropriated funds of about \$4 million a year, split between DoD, the Federal Emergency Management Agency, and the Department of Commerce.

To date, no funds have been appropriated for other provisions of the DPA. As a result, CBO has no basis for estimating any additional costs that could be triggered by extending its authorization for three more years.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for the national security. CBO has determined that the provisions of the DPA would fall under that exclusion.

The CBO staff contact for federal costs is Sam Papenfuss. The CBO staff contact for the private-sector impact is R. William Thomas. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget analysis.

#### FEDERAL MANDATES STATEMENT

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

#### ADVISORY COMMITTEE STATEMENT

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

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States); Article 1, section 8, clause 3 (relating to the power to regulate interstate commerce); Article 1, section 8, clause 5 (relating to the power to coin money and regulate the value thereof); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

#### 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.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section establishes the short title of the bill, the “Defense Production Act Amendments of 2001.”

*Section 2. Extension of the Defense Production Act of 1950*

This section amends section 717(a) of the DPA to extend the termination date for expiring sections of the Act by three years from September 30, 2001, to September 30, 2004.

*Section 3. Authorization of appropriations*

This section amends section 711(b) of the DPA to authorize appropriations for fiscal years 2002 through 2004 to carry out title III of the Act. Current law authorizes appropriations for fiscal years 1996 through 2001 to carry out title III.

*Section 4. Technical amendments*

This section makes several technical amendments to the DPA. It amends the Act to correct incorrect cross-references in sections 301(a) and 304(b), makes the language of sections 301(3) and 303(a) consistent with the other sections of the Act, and updates a reference to the Committee on Financial Services.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**DEFENSE PRODUCTION ACT OF 1950**

\* \* \* \* \*

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

SEC. 301. (a)(1) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of Defense, the Department of Energy, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (herein-after referred to as "guaranteeing agencies") without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national

defense; but no small-business concern (as defined in section **714(a)(1)** of this Act *702(16)*) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

\* \* \* \* \*

(e)(1)(A) Except as provided in subparagraph (D), a guarantee may be made under this section only if the **industrial resource shortfall** *industrial resource or critical technology item shortfall* which such guarantee is intended to correct has been identified in the Budget of the United States, or amendments thereto, submitted to the Congress, accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of subsection (a)(3) of this section.

(B) Any such guarantee may be made only after 60 days have elapsed after such **industrial resource shortfall** *industrial resource or critical technology item shortfall* has been identified pursuant to subparagraph (A).

(C) If the making of any guarantee or guarantees to correct an **industrial resource shortfall** *industrial resource or critical technology item shortfall* would cause the aggregate outstanding amount of all guarantees for such **industrial resource shortfall** *industrial resource or critical technology item shortfall* to exceed \$50,000,000, any such guarantee or guarantees may be made only if specifically authorized by law.

(D) The requirements of subparagraphs (A), (B), and (C) may be waived—

(i) \* \* \*

(ii) upon a determination by the President, on a non-delegable 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) The authority conferred by this section shall not be used primarily to prevent the financial insolvency or bankruptcy of any person, unless

(A) \* \* \*

(B) a copy of such certification, together with a detailed justification thereof, is transmitted to the Congress and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the **Committee on Banking, Finance and Urban Affairs of the House of Representatives** *Committee on Financial Services of the House of Representatives* at least ten days prior to the exercise of that authority for such use.

\* \* \* \* \*

SEC. 303. (a) PRESIDENTIAL PROVISIONS.—

(1) \* \* \*

\* \* \* \* \*

(7) WAIVER.—The requirements of paragraphs (1) through (6) may be waived—

(A) \* \* \*

(B) 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.

\* \* \* \* \*

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

(a) \* \* \*

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

(1) all moneys appropriated for the Fund, as authorized by section **[711(c)] 711(b)**; and

\* \* \* \* \*

**SEC. 309. (a) ANNUAL REPORT ON IMPACT OF OFFSETS.—**

(1) REPORT REQUIRED.—Not later than 18 months after the date of the enactment of the Defense Production Act Amendments of 1984, and annually thereafter, the President shall submit to the **[Committee on Banking, Finance and Urban Affairs of the House of Representatives]** *Committee on Financial Services of the House of Representatives* and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed report on the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States.

\* \* \* \* \*

**TITLE VII—GENERAL PROVISIONS**

**SEC. 711. (a) \* \* \***

(b) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years **[1996 through 2001]** *2002 through 2004*, such sums as may be necessary to carry out title III.

\* \* \* \* \*

**SEC. 717. (a)** Title I (except section 104), title III, and title VII (except sections 708 and 721), and all authority conferred thereunder, shall terminate at the close of September 30, **[2001]** *2004*: *Provided*, That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder shall terminate at the close of June 30, 1953. Title IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

\* \* \* \* \*