

Public Law 102-99
102d Congress

An Act

To extend the expiration date of the Defense Production Act of 1950, and for other purposes.

Aug. 17, 1991
[H.R. 991]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Defense
Production Act
Extension and
Amendments of
1991.
50 USC app.
2061 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defense Production Act Extension and Amendments of 1991".

SEC. 2. EXTENSION OF THE DEFENSE PRODUCTION ACT OF 1950.

The first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "October 20, 1990" and inserting "September 30, 1991".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 711(a)(4) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(a)(4)) is amended to read as follows:

"(4)(A) There are authorized to be appropriated for fiscal year 1991, not to exceed \$50,000,000 to carry out the provisions of sections 301, 302, and 303.

"(B) The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal year 1991 may not exceed \$50,000,000."

SEC. 4. VOLUNTARY AGREEMENTS.

Section 708A of the Defense Production Act of 1950 (50 U.S.C. App. 2158a) is repealed.

SEC. 5. TECHNICAL AMENDMENTS RESTORING ANTITRUST IMMUNITY FOR EMERGENCY ACTIONS INITIATED BY THE PRESIDENT.

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

(1) in subsection (a), by striking "and subsection (j) of section 708A";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) **DEFINITIONS.**—For purposes of this Act—

"(1) **ANTITRUST LAWS.**—The term 'antitrust laws' has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

"(2) **PLAN OF ACTION.**—The term 'plan of action' means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.";

(3) in subsection (c)(1)—

(A) by striking "Except as otherwise provided in section 708A(o), upon" and inserting "Upon"; and

- (B) by inserting “and plans of action” after “voluntary agreements”;
- (4) in subsection (c)(2), by striking the last sentence;
- (5) in the 2nd sentence of subsection (d)(1)—
- (A) by inserting “and except as provided in subsection (n)” after “specified in this section”; and
- (B) by striking “, and the meetings of such committees shall be open to the public”;
- (6) in subsection (d)(2), by striking out “section 552 (b)(1) and (b)(3)” and inserting “paragraphs (1), (3), and (4) of section 552(b)”;
- (7) in subsection (e)(1), by inserting “and plans of action” after “voluntary agreements”;
- (8) in subsection (e)(3)(D), by striking “subsection (b)(1) or (b)(3) of section 552” and inserting “section 552(b)”;
- (9) in subsection (e)(3)(F)—
- (A) by striking “General and to” and inserting “General,”; and
- (B) by inserting “, and the Congress” before the semicolon;
- (10) in subsection (e)(3)(G), by striking “subsections (b)(1) and (b)(3) of section 552” and inserting “paragraphs (1), (3), and (4) of section 552(b)”;
- (11) in subsections (f) and (g)—
- (A) by inserting “or plan of action” after “voluntary agreement” each place such term appears; and
- (B) by inserting “or plan” after “the agreement” each place such term appears;
- (12) in subsection (f)(1)(A) (as amended by paragraph (11) of this section) by inserting “and submits a copy of such agreement or plan to the Congress” before the semicolon;
- (13) in subsection (f)(1)(B) (as amended by paragraph (11) of this section) by inserting “and publishes such finding in the Federal Register” before the period;
- (14) in subsection (f)(2) (as amended by paragraph (11) of this section) by inserting “and publish such certification or finding in the Federal Register” before “, in which case”;
- (15) in subsection (h)—
- (A) by inserting “and plans of action” after “voluntary agreements”;
- (B) by inserting “or plan of action” after “voluntary agreement” each place such term appears;
- (C) by striking “and” at the end of paragraph (9);
- (D) by striking the period at the end of paragraph (10) and inserting “; and”; and
- (E) by adding at the end the following new paragraph:
- “(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.”;
- (16) in subsection (h)(3), by striking “subsections (b)(1) and (b)(3) of section 552” and inserting “paragraph (1), (3), or (4) of section 552(b)”;

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(17) in paragraphs (7) and (8) of subsection (h), by striking “subsection (b)(1) or (b)(3) of section 552” and inserting “section 552b(c)”;

(18) by striking subsection (j) and inserting the following new subsection:

“(j) DEFENSES.—

“(1) IN GENERAL.—Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

“(A) such action was taken—

“(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

“(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

“(B) such person—

“(i) complied with the requirements of this section and any regulation prescribed under this section; and

“(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

“(2) SCOPE OF DEFENSE.—Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President’s designee has authorized and actively supervised the voluntary agreement or plan of action.

“(3) BURDEN OF PERSUASION.—Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

“(4) EXCEPTION FOR ACTIONS TAKEN TO VIOLATE THE ANTITRUST LAWS.—The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.”;

(19) in subsection (k), by inserting “and plans of action” after “voluntary agreements” each place such term appears;

(20) in subsection (l) by inserting “or plan of action” after “voluntary agreement”; and

(21) by adding at the end the following new subsections:

“(n) EXEMPTION FROM ADVISORY COMMITTEE ACT PROVISIONS.—Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other

Federal law and any Federal regulation relating to advisory committees.

“(o) **PREEMPTION OF CONTRACT LAW IN EMERGENCIES.**—In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.”

SEC. 6. TECHNICAL AMENDMENTS TO PRIORITIES IN CONTRACTS AND ORDERS.

Section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071) is amended—

(1) in subsection (a)(2) by striking “materials and facilities” and inserting “materials, services, and facilities”;

(2) in subsection (c)(1) by striking “supplies of materials and equipment” and inserting “materials, equipment, and services”;

(3) by striking paragraphs (2) and (3) and inserting the following new paragraph:

“(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

“(A) such materials, services, and facilities are scarce, critical, and essential—

“(i) to maintain or expand exploration, production, refining, transportation;

“(ii) to conserve energy supplies; or

“(iii) to construct or maintain energy facilities; and

“(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.”; and

(4) by redesignating paragraph (4) as paragraph (3).

50 USC app.
2071 note.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect on October 20, 1990.

SEC. 8. EXEMPTION FROM TERMINATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) (as amended by section 2 of this Act) is amended by striking “and 719” and inserting “719, and 721”.

Approved August 17, 1991.

LEGISLATIVE HISTORY—H.R. 991 (S. 348) (S. 468):

HOUSE REPORTS: Nos. 102-7 (Comm. on Banking, Finance and Urban Affairs) and 102-186 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 137 (1991):

Feb. 5, S. 348 considered and passed Senate.

Feb. 21, S. 468 considered and passed Senate.

Mar. 6, H.R. 991 considered and passed House.

Mar. 7, considered and passed Senate, amended, in lieu of S. 468.

Aug. 2, House and Senate agreed to conference report.