

Calendar No. 668

117TH CONGRESS
2D SESSION**S. 1306****[Report No. 117–269]**

To provide for domestic sourcing of personal protective equipment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2021

Mr. PORTMAN (for himself, Mr. PETERS, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 19, 2022

Reported by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for domestic sourcing of personal protective equipment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Make PPE in America
5 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The COVID-19 pandemic has exposed the
4 vulnerability of the United States supply chains for,
5 and lack of domestic production of, personal protec-
6 tive equipment (PPE).

7 (2) The United States requires a robust, secure,
8 and wholly domestic PPE supply chain to safeguard
9 public health and national security.

10 (3) Issuing a strategy that provides the govern-
11 ment's anticipated needs over the next three years
12 will enable suppliers to assess what changes, if any,
13 are needed in their manufacturing capacity to meet
14 expected demands.

15 (4) In order to foster a domestic PPE supply
16 chain, United States industry needs a strong and
17 consistent demand signal from the Federal Govern-
18 ment providing the necessary certainty to expand
19 production capacity investment in the United States.

20 (5) In order to effectively incentivize investment
21 in the United States and the re-shoring of manufac-
22 turing, long-term contracts must be no shorter than
23 three years in duration.

24 (6) The United States needs a long-term invest-
25 ment strategy for the domestic production of PPE
26 items critical to the United States national response

1 to a public health crisis, including the COVID-19
 2 pandemic.

3 **SEC. 3. REQUIREMENT OF LONG-TERM CONTRACTS FOR**
 4 **DOMESTICALLY MANUFACTURED PERSONAL**
 5 **PROTECTIVE EQUIPMENT.**

6 (a) DEFINITIONS.—In this section:

7 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 8 TEES.—The term “appropriate congressional com-
 9 mittees” means—

10 (A) the Committee on Health, Education,
 11 Labor, and Pensions, the Committee on Fi-
 12 nance, the Committee on Homeland Security
 13 and Governmental Affairs, the Committee on
 14 Veterans’ Affairs, and the Committee on Armed
 15 Services of the Senate; and

16 (B) the Committee on Energy and Com-
 17 merce, the Committee on Ways and Means, the
 18 Committee on Homeland Security, the Com-
 19 mittee on Veterans’ Affairs, and the Committee
 20 on Armed Services of the House of Representa-
 21 tives.

22 (2) COVERED SECRETARY.—The term “covered
 23 Secretary” means the Secretary of Homeland Secu-
 24 rity, the Secretary of Health and Human Services,

1 the Secretary of Defense, the Secretary of Edu-
 2 cation, and the Secretary of Veterans Affairs.

3 ~~(3) PERSONAL PROTECTIVE EQUIPMENT.—~~The
 4 term “personal protective equipment” means sur-
 5 gical masks, respirator masks and powered air puri-
 6 fying respirators and required filters, face shields
 7 and protective eyewear, gloves, disposable and reus-
 8 able surgical and isolation gowns, and head and foot
 9 coverings, or other gear or clothing used to protect
 10 an individual from the transmission of disease.

11 ~~(4) UNITED STATES.—~~The term “United
 12 States” means the 50 States, the District of Colum-
 13 bia, and the possessions of the United States.

14 ~~(b) CONTRACT REQUIREMENTS.—~~Beginning 90 days
 15 after the date of the enactment of this Act, in order to
 16 ensure the sustainment and expansion of personal protec-
 17 tive equipment manufacturing in the United States and
 18 meet the needs of the current pandemic response, any con-
 19 tract for the procurement of personal protective equipment
 20 entered into by a covered Secretary, or a covered Sec-
 21 retary’s designee, shall—

22 ~~(1)~~ be issued for a duration of at least 3 years;
 23 including a base period and all option periods, to
 24 incentivize investment in the production of personal

1 protective equipment and the materials and compo-
2 nents thereof in the United States; and

3 ~~(2)~~ be for personal protective equipment that—

4 ~~(A)~~ is grown, reprocessed, reused, or pro-
5 duced in the United States; and

6 ~~(B)~~ when assembled outside the United
7 States, contains only materials and components
8 that are grown, reprocessed, reused, or pro-
9 duced in the United States.

10 ~~(c) AVAILABILITY EXCEPTION.—~~Paragraph ~~(2)~~ of
11 subsection ~~(b)~~ shall not apply to an item of personal pro-
12 tective equipment, or component or material thereof—

13 ~~(1)~~ that is, or that includes, a material listed in
14 section 25.104 of the Federal Acquisition Regulation
15 as one for which a non-availability determination has
16 been made;

17 ~~(2)~~ as to which the covered Secretary deter-
18 mines that a sufficient quantity of a satisfactory
19 quality that is grown, reprocessed, reused, or pro-
20 duced in the United States cannot be procured as,
21 and when, needed at United States market prices; or

22 ~~(3)~~ if, after maximizing to the extent feasible
23 sources consistent with subsection ~~(b)~~, the covered
24 Secretary certifies every 120 days that it is nec-
25 essary to procure personal protective equipment

1 under alternate procedures to respond to the imme-
2 diate needs of a public health emergency.

3 ~~(d) REPORT.—~~

4 (1) ~~IN GENERAL.~~—Not later than 90 days after
5 the date of the enactment of this Act, the Director
6 of the Office of Management and Budget, in con-
7 sultation with the covered Secretaries, shall submit
8 to the chairs and ranking members of the appro-
9 priate congressional committees a report on the pro-
10 curement of personal protective equipment.

11 (2) ~~ELEMENTS.~~—The report required under
12 paragraph (1) shall include the following elements:

13 (A) The United States long-term domestic
14 procurement strategy for PPE produced in the
15 United States, including strategies to
16 incentivize investment in and maintain United
17 States supply chains for all PPE sufficient to
18 meet the needs of the United States during a
19 public health emergency.

20 (B) An estimate of long-term demand
21 quantities for all PPE items procured by the
22 United States.

23 (C) Recommendations for congressional ac-
24 tion required to implement the United States
25 Government's procurement strategy.

1 (D) A determination whether all notifica-
 2 tions, amendments, and other necessary actions
 3 have been completed to bring the United States
 4 existing international obligations into con-
 5 formity with the statutory requirements of this
 6 Act.

7 (e) AUTHORIZATION OF TRANSFER OF EQUIP-
 8 MENT.—A covered Secretary may transfer to the Strategic
 9 National Stockpile established under section 319F-2 of
 10 the Public Health Service Act (42 U.S.C. 247d-6b) any
 11 excess personal protective equipment acquired under a
 12 contract executed pursuant to subsection (b).

13 (f) COMPLIANCE WITH INTERNATIONAL AGREE-
 14 MENTS.—This Act shall be applied in a manner consistent
 15 with United States obligations under international agree-
 16 ments.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Make PPE in America*
 19 *Act”.*

20 **SEC. 2. FINDINGS.**

21 *Congress makes the following findings:*

22 (1) *The COVID-19 pandemic has exposed the*
 23 *vulnerability of the United States supply chains for,*
 24 *and lack of domestic production of, personal protec-*
 25 *tive equipment (PPE).*

1 (2) *The United States requires a robust, secure,*
2 *and wholly domestic PPE supply chain to safeguard*
3 *public health and national security.*

4 (3) *Issuing a strategy that provides the govern-*
5 *ment's anticipated needs over the next three years will*
6 *enable suppliers to assess what changes, if any, are*
7 *needed in their manufacturing capacity to meet ex-*
8 *pected demands.*

9 (4) *In order to foster a domestic PPE supply*
10 *chain, United States industry needs a strong and*
11 *consistent demand signal from the Federal Govern-*
12 *ment providing the necessary certainty to expand*
13 *production capacity investment in the United States.*

14 (5) *In order to effectively incentivize investment*
15 *in the United States and the re-shoring of manufac-*
16 *turing, long-term contracts must be no shorter than*
17 *three years in duration.*

18 (6) *To accomplish this aim, the United States*
19 *should seek to ensure compliance with its inter-*
20 *national obligations, such as its commitments under*
21 *the World Trade Organization's Agreement on Gov-*
22 *ernment Procurement and its free trade agreements,*
23 *including by invoking any relevant exceptions to*
24 *those agreements, especially those related to national*
25 *security and public health.*

1 (7) *The United States needs a long-term invest-*
 2 *ment strategy for the domestic production of PPE*
 3 *items critical to the United States national response*
 4 *to a public health crisis, including the COVID–19*
 5 *pandemic.*

6 **SEC. 3. REQUIREMENT OF LONG-TERM CONTRACTS FOR DO-**
 7 **MESTICALLY MANUFACTURED PERSONAL**
 8 **PROTECTIVE EQUIPMENT.**

9 (a) *DEFINITIONS.—In this section:*

10 (1) *APPROPRIATE CONGRESSIONAL COMMIT-*
 11 *TEES.—The term “appropriate congressional commit-*
 12 *tees” means—*

13 (A) *the Committee on Homeland Security*
 14 *and Governmental Affairs, the Committee on*
 15 *Health, Education, Labor, and Pensions, the*
 16 *Committee on Finance, the Committee on Vet-*
 17 *erans’ Affairs, and the Committee on Armed*
 18 *Services of the Senate; and*

19 (B) *the Committee on Homeland Security,*
 20 *the Committee on Oversight, the Committee on*
 21 *Energy and Commerce, the Committee on Ways*
 22 *and Means, the Committee on Veterans’ Affairs,*
 23 *and the Committee on Armed Services of the*
 24 *House of Representatives.*

1 (2) *COVERED SECRETARY.*—*The term “covered*
 2 *Secretary” means the Secretary of Homeland Secu-*
 3 *rity, the Secretary of Health and Human Services,*
 4 *the Secretary of Defense, and the Secretary of Vet-*
 5 *erans Affairs.*

6 (3) *PERSONAL PROTECTIVE EQUIPMENT.*—*The*
 7 *term “personal protective equipment” means surgical*
 8 *masks, respirator masks and powered air purifying*
 9 *respirators and required filters, face shields and pro-*
 10 *ductive eyewear, gloves, disposable and reusable sur-*
 11 *gical and isolation gowns, head and foot coverings,*
 12 *and other gear or clothing used to protect an indi-*
 13 *vidual from the transmission of disease.*

14 (4) *UNITED STATES.*—*The term “United States”*
 15 *means the 50 States, the District of Columbia, and*
 16 *the possessions of the United States.*

17 (b) *CONTRACT REQUIREMENTS FOR DOMESTIC PRO-*
 18 *DUCTION.*—*Beginning 90 days after the date of the enact-*
 19 *ment of this Act, in order to ensure the sustainment and*
 20 *expansion of personal protective equipment manufacturing*
 21 *in the United States and meet the needs of the current pan-*
 22 *demic response, any contract for the procurement of per-*
 23 *sonal protective equipment entered into by a covered Sec-*
 24 *retary, or a covered Secretary’s designee, shall—*

1 (1) *be issued for a duration of at least 2 years,*
2 *plus all option periods necessary, to incentivize in-*
3 *vestment in the production of personal protective*
4 *equipment and the materials and components thereof*
5 *in the United States; and*

6 (2) *be for personal protective equipment, includ-*
7 *ing the materials and components thereof, that is*
8 *grown, reprocessed, reused, or produced in the United*
9 *States.*

10 (c) *ALTERNATIVES TO DOMESTIC PRODUCTION.—The*
11 *requirement under subsection (b) shall not apply to an item*
12 *of personal protective equipment, or component or material*
13 *thereof if, after maximizing to the extent feasible sources*
14 *consistent with subsection (b), the covered Secretary—*

15 (1) *maximizes sources for personal protective*
16 *equipment that is assembled outside the United States*
17 *containing only materials and components that are*
18 *grown, reprocessed, reused, or produced in the United*
19 *States; and*

20 (2) *certifies every 120 days that it is necessary*
21 *to procure personal protective equipment under alter-*
22 *native procedures to respond to the immediate needs*
23 *of a public health emergency.*

24 (d) *AVAILABILITY EXCEPTION.—*

1 (1) *IN GENERAL.*—Subsections (b) and (c) shall
 2 not apply to an item of personal protective equip-
 3 ment, or component or material thereof—

4 (A) that is, or that includes, a material list-
 5 ed in section 25.104 of the Federal Acquisition
 6 Regulation as one for which a non-availability
 7 determination has been made; or

8 (B) as to which the covered Secretary deter-
 9 mines that a sufficient quantity of a satisfactory
 10 quality that is grown, reprocessed, reused, or
 11 produced in the United States cannot be pro-
 12 cured as, and when, needed at United States
 13 market prices.

14 (2) *CERTIFICATION REQUIREMENT.*—The covered
 15 Secretary shall certify every 120 days that the excep-
 16 tion under paragraph (1) is necessary to meet the im-
 17 mediate needs of a public health emergency.

18 (e) *REPORT.*—

19 (1) *IN GENERAL.*—Not later than 180 days after
 20 the date of the enactment of this Act, the Director of
 21 the Office of Management and Budget, in consultation
 22 with the covered Secretaries, shall submit to the
 23 chairs and ranking members of the appropriate con-
 24 gressional committees a report on the procurement of
 25 personal protective equipment.

1 (2) *ELEMENTS.*—*The report required under*
 2 *paragraph (1) shall include the following elements:*

3 (A) *The United States long-term domestic*
 4 *procurement strategy for PPE produced in the*
 5 *United States, including strategies to incentivize*
 6 *investment in and maintain United States sup-*
 7 *ply chains for all PPE sufficient to meet the*
 8 *needs of the United States during a public health*
 9 *emergency.*

10 (B) *An estimate of long-term demand quan-*
 11 *tities for all PPE items procured by the United*
 12 *States.*

13 (C) *Recommendations for congressional ac-*
 14 *tion required to implement the United States*
 15 *Government's procurement strategy.*

16 (D) *A determination whether all notifica-*
 17 *tions, amendments, and other necessary actions*
 18 *have been completed to bring the United States*
 19 *existing international obligations into con-*
 20 *formity with the statutory requirements of this*
 21 *Act.*

22 (f) *AUTHORIZATION OF TRANSFER OF EQUIPMENT.*—

23 (1) *IN GENERAL.*—*A covered Secretary may*
 24 *transfer to the Strategic National Stockpile estab-*
 25 *lished under section 319F–2 of the Public Health*

1 *Service Act (42 U.S.C. 247d–6b) any excess personal*
 2 *protective equipment acquired under a contract exe-*
 3 *cuted pursuant to subsection (b).*

4 (2) *TRANSFER OF EQUIPMENT DURING A PUBLIC*
 5 *HEALTH EMERGENCY.—*

6 (A) *AMENDMENT.—Title V of the Homeland*
 7 *Security Act of 2002 (6 U.S.C. 311 et seq.) is*
 8 *amended by adding at the end the following:*

9 **“SEC. 529. TRANSFER OF EQUIPMENT DURING A PUBLIC**
 10 **HEALTH EMERGENCY.**

11 “(a) *AUTHORIZATION OF TRANSFER OF EQUIP-*
 12 *MENT.—During a public health emergency declared by the*
 13 *Secretary of Health and Human Services under section*
 14 *319(a) of the Public Health Service Act (42 U.S.C.*
 15 *247d(a)), the Secretary, at the request of the Secretary of*
 16 *Health and Human Services, may transfer to the Depart-*
 17 *ment of Health and Human Services, on a reimbursable*
 18 *basis, excess personal protective equipment or medically*
 19 *necessary equipment in the possession of the Department.*

20 “(b) *DETERMINATION BY SECRETARIES.—*

21 “(1) *IN GENERAL.—In carrying out this sec-*
 22 *tion—*

23 “(A) *before requesting a transfer under sub-*
 24 *section (a), the Secretary of Health and Human*
 25 *Services shall determine whether the personal*

1 *protective equipment or medically necessary*
2 *equipment is otherwise available; and*

3 *“(B) before initiating a transfer under sub-*
4 *section (a), the Secretary, in consultation with*
5 *the heads of each component within the Depart-*
6 *ment, shall—*

7 *“(i) determine whether the personal*
8 *protective equipment or medically necessary*
9 *equipment requested to be transferred under*
10 *subsection (a) is excess equipment; and*

11 *“(ii) certify that the transfer of the*
12 *personal protective equipment or medically*
13 *necessary equipment will not adversely im-*
14 *pact the health or safety of officers, employ-*
15 *ees, or contractors of the Department.*

16 *“(2) NOTIFICATION.—The Secretary of Health*
17 *and Human Services and the Secretary shall each*
18 *submit to Congress a notification explaining the de-*
19 *termination made under subparagraphs (A) and (B),*
20 *respectively, of paragraph (1).*

21 *“(3) REQUIRED INVENTORY.—*

22 *“(A) IN GENERAL.—The Secretary shall—*

23 *“(i) acting through the Chief Medical*
24 *Officer of the Department, maintain an in-*
25 *ventory of all personal protective equipment*

1 *and medically necessary equipment in the*
 2 *possession of the Department; and*

3 “(ii) *make the inventory required*
 4 *under clause (i) available, on a continual*
 5 *basis, to—*

6 “(I) *the Secretary of Health and*
 7 *Human Services; and*

8 “(II) *the Committee on Appro-*
 9 *priations and the Committee on Home-*
 10 *land Security and Governmental Af-*
 11 *fairs of the Senate and the Committee*
 12 *on Appropriations and the Committee*
 13 *on Homeland Security of the House of*
 14 *Representatives.*

15 “(B) *FORM.—Each inventory required to be*
 16 *made available under subparagraph (A) shall be*
 17 *submitted in unclassified form, but may include*
 18 *a classified annex.”.*

19 (B) *TABLE OF CONTENTS AMENDMENT.—*
 20 *The table of contents in section 1(b) of the Home-*
 21 *land Security Act of 2002 (Public Law 107–296;*
 22 *116 Stat. 2135) is amended by inserting after*
 23 *the item relating to section 528 the following:*

“Sec. 529. *Transfer of equipment during a public health emergency.”.*

24 (3) *STRATEGIC NATIONAL STOCKPILE.—Section*
 25 *319F–2(a) of the Public Health Service Act (42*

1 *U.S.C. 247d–6b(a)) is amended by adding at the end*
2 *the following:*

3 “(6) *TRANSFERS OF ITEMS.*—*The Secretary, in*
4 *coordination with the Secretary of Homeland Secu-*
5 *rity, may sell drugs, vaccines and other biological*
6 *products, medical devices, or other supplies main-*
7 *tained in the stockpile under paragraph (1) to a Fed-*
8 *eral agency or private, nonprofit, State, local, tribal,*
9 *or territorial entity for immediate use and distribu-*
10 *tion, provided that any such items being sold are—*

11 “(A) *within 1 year of their expiration date;*

12 *or*

13 “(B) *determined by the Secretary to no*
14 *longer be needed in the stockpile due to advances*
15 *in medical or technical capabilities.”.*

16 (g) *COMPLIANCE WITH INTERNATIONAL AGREE-*
17 *MENTS.*—*The President or the President’s designee shall*
18 *take all necessary steps, including invoking the rights of the*
19 *United States under Article III of the World Trade Organi-*
20 *zation’s Agreement on Government Procurement and the*
21 *relevant exceptions of other relevant agreements to which*
22 *the United States is a party, to ensure that the inter-*
23 *national obligations of the United States are consistent with*
24 *the provisions of this Act.*

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