I

116TH CONGRESS
2D SESSION

H. R. 6858

To enhance authorities under the Defense Production Act of 1950 to respond to the COVID–19 emergency, to provide additional oversight of such authorities, and to require a strategy on securing supply chains for medical materials, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2020

Mr. VARGAS (for himself, Ms. WATERS, Mr. CROW, Mr. RYAN, Mrs. TRAHAN, and Ms. SLOTKIN) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To enhance authorities under the Defense Production Act of 1950 to respond to the COVID–19 emergency, to provide additional oversight of such authorities, and to require a strategy on securing supply chains for medical materials, 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.

This Act may be cited as the ''COVID–19 Emergency Medical Supplies Enhancement Act of 2020''.

SEC. 2. DETERMINATION ON EMERGENCY SUPPLIES AND RELATIONSHIP TO STATE AND LOCAL EFFORTS.

(a) DETERMINATION.—For the purposes of section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511), the following materials shall be deemed to be scarce and critical materials essential to the national defense and otherwise meet the requirements of section 101(b) of such Act during the COVID–19 emergency period:

(1) Diagnostic tests, including serological tests, for COVID–19 and the reagents and other materials necessary for producing or conducting such tests.

(2) Personal protective equipment, including face shields, N–95 respirator masks, and any other masks determined by the Secretary of Health and Human Services to be needed to respond to the COVID–19 pandemic, and the materials to produce such equipment.

(3) Medical ventilators, the components necessary to make such ventilators, and medicines needed to use a ventilator as a treatment for any individual who is hospitalized for COVID–19.

(4) Pharmaceuticals and any medicines determined by the Food and Drug Administration or another Government agency to be effective in treating COVID–19 (including vaccines for COVID–19) and

any materials necessary to produce or use such pharmaceuticals or medicines (including self-injection syringes or other delivery systems).

(5) Any other medical equipment or supplies determined by the Secretary of Health and Human Services or the Secretary of Homeland Security to be scarce and critical materials essential to the national defense for purposes of section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511).

(b) EXERCISE OF TITLE I AUTHORITIES IN RELATION TO CONTRACTS BY STATE AND LOCAL GOVERNMENTS.—In exercising authorities under title I of the Defense Production Act of 1950 (50 U.S.C. 4511 et seq.) during the COVID–19 emergency period, the President (and any officer or employee of the United States to which authorities under such title I have been delegated)—

(1) may exercise the prioritization or allocation authority provided in such title I to exclude any materials described in subsection (a) ordered by a State or local government that are scheduled to be delivered within 15 days of the time at which—

(A) the purchase order or contract by the Federal Government for such materials is made; or

(B) the materials are otherwise allocated by the Federal Government under the authorities contained in such Act; and

(2) shall, within 24 hours of any exercise of the prioritization or allocation authority provided in such title I—

(A) notify any State or local government if the exercise of such authorities would delay the receipt of such materials ordered by such government; and

(B) take such steps as may be necessary to ensure that such materials ordered by such government are delivered in the shortest possible period.

(c) UPDATE TO THE FEDERAL ACQUISITION REGULATION.—Not later than 15 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to reflect the requirements of subsection (b)(1).

SEC. 3. ENGAGEMENT WITH THE PRIVATE SECTOR.

(a) SENSE OF CONGRESS.—The Congress—

(1) appreciates the willingness of private companies not traditionally involved in producing items for the health sector to volunteer to use their exper-

tise and supply chains to produce essential medical supplies and equipment;

(2) encourages other manufacturers to review their existing capacity and to develop capacity to produce essential medical supplies, medical equipment, and medical treatments to address the COVID–19 emergency; and

(3) commends and expresses deep appreciation to individual citizens who have been producing personal protective equipment and other materials for, in particular, use at hospitals in their community.

(b) OUTREACH REPRESENTATIVE.—

(1) DESIGNATION.—Consistent with the authorities in title VII of the Defense Production Act of 1950 (50 U.S.C. 4551 et seq.), the Administrator of the Federal Emergency Management Agency, in consultation with the Secretary of Health and Human Services, shall designate or shall appoint, pursuant to section 703 of such Act (50 U.S.C. 4553), an individual to be known as the ''Outreach Representative''. Such individual shall—

(A) be appointed from among individuals with substantial experience in the private sector in the production of medical supplies or equipment; and

(B) act as the Government-wide single point of contact during the COVID–19 emergency for outreach to manufacturing companies and their suppliers who may be interested in producing medical supplies or equipment, including the materials described under section 2.

(2) ENCOURAGING PARTNERSHIPS.—The Outreach Representative shall seek to develop partnerships between companies, in coordination with the Supply Chain Stabilization Task Force or any overall coordinator appointed by the President to oversee the response to the COVID–19 emergency, including through the exercise of the authorities under section 708 of the Defense Production Act of 1950 (50 U.S.C. 4558).

SEC. 4. ENHANCEMENT OF SUPPLY CHAIN PRODUCTION.

In exercising authority under title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) with respect to materials described in section 2, the President shall seek to ensure that support is provided to companies that comprise the supply chains for reagents, components, raw materials, and other materials and items necessary to produce or use the materials described in section 2.

SEC. 5. OVERSIGHT OF CURRENT ACTIVITY AND NEEDS.

(a) RESPONSE TO IMMEDIATE NEEDS.—

(1) IN GENERAL.—Not later than 7 days after the date of the enactment of this Act, the President, in coordination with the National Response Coordination Center of the Federal Emergency Management Agency, the Administrator of the Defense Logistics Agency, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and heads of other Federal agencies (as appropriate), shall submit to the appropriate congressional committees a report assessing the immediate needs described in paragraph (2) to combat the COVID–19 pandemic and the plan for meeting those immediate needs.

(2) ASSESSMENT.—The report required by this subsection shall include—

(A) an assessment of the needs for medical supplies or equipment necessary to address the needs of the population of the United States infected by the virus SARS–CoV–2 that causes COVID–19 and to prevent an increase in the incidence of COVID–19 throughout the United States, including diagnostic tests, serological tests, medicines that have been approved by the Food and Drug Administration to treat

COVID–19, and ventilators and medicines needed to employ ventilators;

(B) based on meaningful consultations with relevant stakeholders, an assessment of the need for personal protective equipment and other supplies (including diagnostic tests) required by—

(i) health professionals, health workers, and hospital staff;

(ii) workers in industries and sectors described in the ''Advisory Memorandum on Identification of Essential Critical Infrastructure Workers during the COVID–19 Response'' issued by the Director of Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security on April 17, 2020 (and any expansion of industries and sectors included in updates to such advisory memorandum); and

(iii) other workers determined to be essential based on such consultation;

(C) an assessment of the quantities of equipment and supplies in the Strategic National Stockpile (established under section

319F–2 of the Public Health Service Act (42 U.S.C. 247d–6b(a)(1))) as of the date of the report, and the projected gap between the quantities of equipment and supplies identified as needed in the assessment under subparagraphs (A) and (B) and the quantities in the Strategic National Stockpile;

(D) an identification of the industry sectors and manufacturers most ready to fulfill purchase orders for such equipment and supplies (including manufacturers that may be incentivized) through the exercise of authority under section 303(e) of the Defense Production Act of 1950 (50 U.S.C. 4533(e)) to modify, expand, or improve production processes to manufacture such equipment and supplies to respond immediately to a need identified in subparagraph (A) or (B);

(E) an identification of Government-owned and privately-owned stockpiles of such equipment and supplies not included in the Strategic National Stockpile that could be repaired or refurbished;

(F) an identification of previously distributed critical supplies that can be redistributed based on current need;

(G) a description of any exercise of the authorities described under subsection (a)(5) or (b)(1) of section 2; and

(H) an identification of critical areas of need, by county and by areas identified by the Indian Health Service, in the United States and the metrics and criteria for identification as a critical area.

(3) PLAN.—The report required by this subsection shall include a plan for meeting the immediate needs to combat the COVID–19 pandemic, including the needs described in paragraph (1). Such plan shall include—

(A) each contract the Federal Government has entered into to meet such needs, including the purpose of each contract, the type and amount of equipment, supplies, or services to be provided under the contract, the entity performing such contract, and the dollar amount of each contract;

(B) each contract that the Federal Government intends to enter into within 14 days after

submission of such report, including the information described in subparagraph (A) for each such contract; and

(C) whether any of the contracts described in subparagraph (A) or (B) have or will have a priority rating under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.), including purchase orders pursuant to Department of Defense Directive 4400.1 (or any successor directive), subpart A of part 101 of title 45, Code of Federal Regulations, or any other applicable authority.

(4) ADDITIONAL REQUIREMENTS.—The report required by this subsection, and each update required by paragraph (5), shall include—

(A) any requests for equipment and supplies from State or local governments and Indian Tribes, and an accompanying list of the employers and unions consulted in developing these requests;

(B) any modeling or formulas used to determine allocation of equipment and supplies, and any related chain of command issues on making final decisions on allocations;

(C) the amount and destination of equipment and supplies delivered;

(D) an explanation of why any portion of any contract, whether to replenish the Strategic National Stockpile or otherwise, will not be filled;

(E) of products procured under this section, the percentage of such products that are used to replenish the Strategic National Stockpile, that are targeted to COVID–19 hotspots, and that are used for the commercial market;

(F) metrics, formulas, and criteria used to determine COVID–19 hotspots or areas of critical need for a State, county, or an area identified by the Indian Health Service;

(G) production and procurement benchmarks, where practicable; and

(H) results of the consultation with the relevant stakeholders required by paragraph (2)(B).

(5) UPDATES.—The President, in coordination with the National Response Coordination Center of the Federal Emergency Management Agency, the Administrator of the Defense Logistics Agency, the Secretary of Health and Human Services, the Sec-

retary of Veterans Affairs, and heads of other Federal agencies (as appropriate), shall update such report every 14 days.

(6) PUBLIC AVAILABILITY.—The President shall make the report required by this subsection and each update required by paragraph (5) available to the public, including on a Government website.

(b) RESPONSE TO LONGER-TERM NEEDS.—

(1) IN GENERAL.—Not later than 14 days after the date of enactment of this Act, the President, in coordination with the National Response Coordination Center of the Federal Emergency Management Agency, the Administrator of the Defense Logistics Agency, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, and heads of other Federal agencies (as appropriate), shall submit to the appropriate congressional committees a report containing an assessment of the needs described in paragraph (2) to combat the COVID–19 pandemic and the plan for meeting such needs during the 6-month period beginning on the date of submission of the report.

(2) ASSESSMENT.—The report required by this subsection shall include—

(A) an assessment of the elements described in subparagraphs (A) through (E) and subparagraph (H) of subsection (a)(2); and

(B) an assessment of needs related to COVID–19 vaccines and any additional services to address the COVID–19 pandemic, including services related to health surveillance to ensure that the appropriate level of contact tracing related to detected infections is available throughout the United States.

(3) PLAN.—The report required by this subsection shall include a plan for meeting the longer-term needs to combat the COVID–19 pandemic, including the needs described in paragraph (1). This plan shall include—

(A) a plan to exercise authorities under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) necessary to increase the production of the medical equipment, supplies, and services that are essential to meeting the needs identified in paragraph (2) (including the number of N–95 respirator masks and other personal protective equipment needed), based on meaningful consultations with relevant stakeholders—

(i) by the private sector to resume economic activity; and

(ii) by the public and nonprofit sectors to significantly increase their activities;

(B) results of the consultations with the relevant stakeholders required by subparagraph (A)(ii);

(C) an estimate of the funding and other measures necessary to rapidly expand manufacturing production capacity for such equipment and supplies, including—

(i) any efforts to expand, retool, or reconfigure production lines;

(ii) any efforts to establish new production lines through the purchase and installation of new equipment; or

(iii) the issuance of additional contracts, purchase orders, purchase guarantees, or other similar measures;

(D) each contract the Federal Government has entered into to meet such needs or expand such production, the purpose of each contract, the type and amount of equipment, supplies, or services to be provided under the contract, the

entity performing such contract, and the dollar amount of each contract;

(E) each contract that the Federal Government intends to enter into within 14 days after submission of such report, including the information described in subparagraph (D) for each such contract;

(F) whether any of the contracts described in subparagraph (D) or (E) have or will have a priority rating under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.), including purchase orders pursuant to Department of Defense Directive 4400.1 (or any successor directive), subpart A of part 101 of title 45, Code of Federal Regulations, or any other applicable authority; and

(G) the manner in which the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) could be used to increase services necessary to combat the COVID–19 pandemic, including services described in paragraph (2)(B).

(4) UPDATES.—The President, in coordination with the National Response Coordination Center of the Federal Emergency Management Agency, the Administrator of the Defense Logistics Agency, the

Secretary of Health and Human Services, the Secretary of Veterans Affairs, and heads of other Federal agencies (as appropriate), shall update such report every 14 days.

(5) PUBLIC AVAILABILITY.—The President shall make the report required by this subsection and each update required by paragraph (4) available to the public, including on a Government website.

(c) REPORT ON EXERCISING AUTHORITIES UNDER THE DEFENSE PRODUCTION ACT OF 1950.—

(1) IN GENERAL.—Not later than 14 days after the date of the enactment of this Act, the President, in consultation with the Administrator of the Federal Emergency Management Agency, the Secretary of Defense, and the Secretary of Health and Human Services, shall submit to the appropriate congressional committees a report on the exercise of authorities under titles I, III, and VII of the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.) prior to the date of such report.

(2) CONTENTS.—The report required under paragraph (1) and each update required under paragraph (3) shall include, with respect to each exercise of such authority—

(A) an explanation of the purpose of the applicable contract, purchase order, or other exercise of authority (including an allocation of materials, services, and facilities under section 101(a)(2) of the Defense Production Act of 1950 (50 U.S.C. 4511(a)(2)));

(B) the cost of such exercise of authority; and

(C) if applicable—

(i) the amount of goods that were purchased or allocated;

(ii) an identification of the entity awarded a contract or purchase order or that was the subject of the exercise of authority; and

(iii) an identification of any entity that had shipments delayed by the exercise of any authority under the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

(3) UPDATES.—The President shall update the report required under paragraph (1) every 14 days.

(4) PUBLIC AVAILABILITY.—The President shall make the report required by this subsection

and each update required by paragraph (3) available to the public, including on a Government website.

(d) QUARTERLY REPORTING.—The President shall submit to Congress, and make available to the public (including on a Government website), a quarterly report detailing all expenditures made pursuant to titles I, III, and VII of the Defense Production Act of 1950 (50 U.S.C. 4501 et seq.).

(e) SUNSET.—The requirements of this section shall terminate on the later of—

(1) December 31, 2021; or

(2) the end of the COVID–19 emergency period.

SEC. 6. ENHANCEMENTS TO THE DEFENSE PRODUCTION ACT OF 1950.

(a) HEALTH EMERGENCY AUTHORITY.—Section 107 of the Defense Production Act of 1950 (50 U.S.C. 4517) is amended by adding at the end the following:

''(c) HEALTH EMERGENCY AUTHORITY.—With respect to a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act, or preparations for such a health emergency, the Secretary of Health and Human Services and the Administrator of the Federal Emergency Management Agency are authorized to carry out the au-

thorities provided under this section to the same extent as the President.''.

(b) EMPHASIS ON BUSINESS CONCERNS OWNED BY WOMEN, MINORITIES, VETERANS, AND NATIVE AMERICANS.—Section 108 of the Defense Production Act of 1950 (50 U.S.C. 4518) is amended—

(1) in the heading, by striking ''**MODERNIZATION OF SMALL BUSINESS SUPPLIERS**'' and inserting ''**SMALL BUSINESS PARTICIPATION AND FAIR INCLUSION**'';

(2) by amending subsection (a) to read as follows:

''(a) PARTICIPATION AND INCLUSION.—

''(1) IN GENERAL.—In providing any assistance under this Act, the President shall accord a strong preference for subcontractors and suppliers that are—

''(A) small business concerns; or

''(B) businesses of any size owned by women, minorities, veterans, and the disabled.

''(2) SPECIAL CONSIDERATION.—To the maximum extent practicable, the President shall accord the preference described under paragraph (1) to small business concerns and businesses described in paragraph (1)(B) that are located in areas of high

unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.''; and

(3) by adding at the end the following:

''(e) MINORITY DEFINED.—In this section, the term 'minority'—

''(1) has the meaning given the term in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

''(2) includes any indigenous person in the United States, including any territories of the United States.''.

(c) ADDITIONAL INFORMATION IN ANNUAL REPORT.—Section 304(f)(3) of the Defense Production Act of 1950 (50 U.S.C. 4534(f)(3)) is amended by striking ''year.'' and inserting ''year, including the percentage of contracts awarded using Fund amounts to each of the groups described in section 108(a)(1)(B) (and, with respect to minorities, disaggregated by ethnic group), and the percentage of the total amount expended during such fiscal year on such contracts.''.

(d) DEFINITION OF NATIONAL DEFENSE.—Section 702(14) of the Defense Production Act of 1950 is amended by striking ''and critical infrastructure protection and restoration'' and inserting '', critical infrastructure protec-

tion and restoration, and health emergency preparedness and response activities''.

SEC. 7. SECURING ESSENTIAL MEDICAL MATERIALS.

(a) STATEMENT OF POLICY.—Section 2(b) of the Defense Production Act of 1950 (50 U.S.C. 4502) is amended—

(1) by redesignating paragraphs (3) through (8) as paragraphs (4) through (9), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) authorities under this Act should be used when appropriate to ensure the availability of medical materials essential to national defense, including through measures designed to secure the drug supply chain, and taking into consideration the importance of United States competitiveness, scientific leadership and cooperation, and innovative capacity;''.

(b) STRENGTHENING DOMESTIC CAPABILITY.—Section 107 of the Defense Production Act of 1950 (50 U.S.C. 4517) is amended—

(1) in subsection (a), by inserting ''(including medical materials)'' after ''materials''; and

(2) in subsection (b)(1), by inserting ''(including medical materials such as drugs to diagnose,

cure, mitigate, treat, or prevent disease that essential to national defense)'' after ''essential materials''.

(c) STRATEGY ON SECURING SUPPLY CHAINS FOR MEDICAL ARTICLES.—Title I of the Defense Production Act of 1950 (50 U.S.C. 4511 et seq.) is amended by adding at the end the following:

''SEC. 109. STRATEGY ON SECURING SUPPLY CHAINS FOR MEDICAL MATERIALS.

''(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, the President, in consultation with the Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of Homeland Security, and the Secretary of Defense, shall transmit a strategy to the appropriate Members of Congress that includes the following:

''(1) A detailed plan to use the authorities under this title and title III, or any other provision of law, to ensure the supply of medical materials (including drugs to diagnose, cure, mitigate, treat, or prevent disease) essential to national defense, to the extent necessary for the purposes of this Act.

''(2) An analysis of vulnerabilities to existing supply chains for such medical articles, and recommendations to address the vulnerabilities.

''(3) Measures to be undertaken by the President to diversify such supply chains, as appropriate and as required for national defense.

''(4) A discussion of—

''(A) any significant effects resulting from the plan and measures described in this subsection on the production, cost, or distribution of vaccines or any other drugs (as defined under section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321));

''(B) a timeline to ensure that essential components of the supply chain for medical materials are not under the exclusive control of a foreign government in a manner that the President determines could threaten the national defense of the United States; and

''(C) efforts to mitigate any risks resulting from the plan and measures described in this subsection to United States competitiveness, scientific leadership, and innovative capacity, including efforts to cooperate and proactively engage with United States allies.

''(b) PROGRESS REPORT.—Following submission of the strategy under subsection (a), the President shall submit to the appropriate Members of Congress an annual

progress report evaluating the implementation of the strategy, and may include updates to the strategy as appropriate. The strategy and progress reports shall be submitted in unclassified form but may contain a classified annex.

''(c) APPROPRIATE MEMBERS OF CONGRESS.—The term 'appropriate Members of Congress' means the Speaker, majority leader, and minority leader of the House of Representatives, the majority leader and minority leader of the Senate, the Chairman and Ranking Member of the Committees on Armed Services and Financial Services of the House of Representatives, and the Chairman and Ranking Member of the Committees on Armed Services and Banking, Housing, and Urban Affairs of the Senate.''.

SEC. 8. GAO REPORT.

(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, and annually thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on ensuring that the United States Government has access to the medical supplies and equipment necessary to respond to future pandemics and public health emergencies, including recommendations with respect to how to ensure that the United States supply chain for diagnostic tests

(including serological tests), personal protective equipment, vaccines, and therapies is better equipped to respond to emergencies, including through the use of funds in the Defense Production Act Fund under section 304 of the Defense Production Act of 1950 (50 U.S.C. 4534) to address shortages in that supply chain.

(b) REVIEW OF ASSESSMENT AND PLAN.—

(1) IN GENERAL.—Not later than 30 days after each of the submission of the reports described in subsections (a) and (b) of section 5, the Comptroller General of the United States shall submit to the appropriate congressional committees an assessment of such reports, including identifying any gaps and providing any recommendations regarding the subject matter in such reports.

(2) MONTHLY REVIEW.—Not later than a month after the submission of the assessment under paragraph (1), and monthly thereafter, the Comptroller General shall issue a report to the appropriate congressional committees with respect to any updates to the reports described in subsections (a) and (b) of section 5 that were issued during the previous 1-month period, containing an assessment of such updates, including identifying any gaps and

providing any recommendations regarding the subject matter in such updates.

SEC. 9. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committees on Appropriations, Armed Services, Energy and Commerce, Financial Services, Homeland Security, and Veterans' Affairs of the House of Representatives and the Committees on Appropriations, Armed Services, Banking, Housing, and Urban Affairs, Health, Education, Labor, and Pensions, Homeland Security and Governmental Affairs, and Veterans' Affairs of the Senate.

(2) COVID–19 EMERGENCY PERIOD.—The term ''COVID–19 emergency period'' means the period beginning on the date of enactment of this Act and ending after the end of the incident period for the emergency declared on March 13, 2020, by the President under Section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 4121 et seq.) relating to the Coronavirus Disease 2019 (COVID–19) pandemic.

(3) RELEVANT STAKEHOLDER.—The term ''relevant stakeholder'' means—

(A) representative private sector entities;

(B) representatives of the nonprofit sector; and

(C) representatives of labor organizations representing workers, including unions that represent health workers, manufacturers, public sector employees, and service sector workers.

(4) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

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