

116TH CONGRESS
2D SESSION

H. R. 8553

To provide for expanded capacity to respond to pandemic disaster, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2020

Mr. CARTWRIGHT (for himself, Mr. MORELLE, Mr. PETERSON, and Mr. PAPPAS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce, Science, Space, and Technology, Armed Services, and Veterans' Affairs, 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

A BILL

To provide for expanded capacity to respond to pandemic disaster, 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 “Managing American
5 Knowledge and Equipment to Prevent Pandemic Emer-
6 gencies Act” or the “MAKE PPE Act”.

1 **SEC. 2. CAPACITY TO RESPOND TO PANDEMIC DISASTER.**

2 (a) IN GENERAL.—Section 102 of the Robert T.
3 Stafford Disaster Relief and Emergency Assistance Act
4 (42 U.S.C. 5122) is amended by inserting “any public
5 health emergency (including any pandemic or virus
6 threat),” after “drought),”.

7 (b) WHOLE OF SOCIETY REILIENCY.—Section
8 2802(b) of the Public Health Service Act (42 U.S.C.
9 300hh–1(b)) is amended—

10 (1) by redesignating paragraphs (7), (8), (9),
11 and (10) as paragraphs (8), (9), (10), and (11), re-
12 spectively; and

13 (2) by inserting after paragraph (6) the fol-
14 lowing:

15 “(7) WHOLE OF SOCIETY RESILIENCY.—Devel-
16 oping a capacity for long-term response to a major
17 pandemic or other infectious disease outbreak, in-
18 cluding the manufacture and distribution of critical
19 pharmaceutical and nonpharmaceutical supplies, in-
20 cluding personal protective equipment, needed to
21 slow the spread of a pandemic or other infectious
22 disease while preserving essential functions of soci-
23 ety.”.

24 (c) DEVELOPMENT OF CAPACITY.—Title II of the
25 Robert T. Stafford Disaster Relief and Emergency Assist-

1 ance Act (42 U.S.C. 5131 et seq.) is amended by adding
2 at the end the following:

3 **“SEC. 205. CAPACITY FOR MATERIALS NEEDED.**

4 “(a) IN GENERAL.—The Administrator shall develop
5 the capacity to coordinate the procurement, distribution,
6 and tracking of critical nonpharmaceutical materials needs
7 of the United States during a major pandemic or other
8 infectious disease outbreak of regional, national, or global
9 scale.

10 “(b) COLLECTION AND DISSEMINATION OF DATA.—
11 The Administrator shall develop the capacity to coordinate
12 the collection and dissemination of data to track national
13 demand for critical nonpharmaceutical materials during a
14 major pandemic or other infectious disease outbreak of re-
15 gional, national, or global scale.”.

16 **SEC. 3. COORDINATING PROCUREMENT AND DISTRIBUTION DURING A PANDEMIC EMERGENCY.**

17
18 (a) IN GENERAL.—The Executive Office of the Presi-
19 dent, the Administrator of the Federal Emergency Man-
20 agement Agency, and the Assistant Secretary of Health
21 and Human Services for Preparedness and Response shall
22 jointly develop a protocol under which the Federal Emer-
23 gency Management Agency shall—

24 (1) assume responsibility for coordinating Fed-
25 eral procurement of critical nonpharmaceutical sup-

1 plies during a national public health emergency
2 based on the severity and extent of such an emer-
3 gency; and

4 (2) implement the companion strategy devel-
5 oped under section 5.

6 (b) COORDINATION.—In developing the protocol
7 under subsection (a), the Executive Office of the Presi-
8 dent, the Administrator of the Federal Emergency Man-
9 agement Agency, and the Assistant Secretary of Health
10 and Human Services for Preparedness and Response shall
11 consult with the Director of the Centers for Disease Con-
12 trol and Prevention, the Commanding General of the
13 Corps of Engineers, and other heads of Federal agencies
14 determined necessary by the Administrator of the Federal
15 Emergency Management Agency and the Assistant Sec-
16 retary of Health and Human Services for Preparedness
17 and Response.

18 (c) CONTENTS.—The protocol developed under sub-
19 section (a) shall—

20 (1) specify the categories of personal protective
21 equipment and related items to be coordinated by
22 the Federal Emergency Management Agency, in line
23 with the strategy for critical materials described in
24 section 206 of the Robert T. Stafford Disaster Relief

1 and Emergency Assistance Act, added by this Act;
2 and

3 (2) consider the scale and severity of an emer-
4 gency in determining when and how the Federal
5 Emergency Management Agency shall exercise au-
6 thorities under the protocol, as well as the process
7 by which the Assistant Secretary of Health and
8 Human Services for Preparedness and Response, in-
9 cluding the Director of the Strategic National Stock-
10 pile, shall work in coordination with the Federal
11 Emergency Management Agency.

12 (d) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Executive Office of the Presi-
14 dent, the Administrator of the Federal Emergency Man-
15 agement Agency, and the Assistant Secretary of Health
16 and Human Services for Preparedness and Response shall
17 jointly submit to the relevant committees of jurisdiction
18 of the House of Representatives and the Senate, including
19 the Committee on Appropriations of the House of Rep-
20 resentatives and the Senate, a report detailing the protocol
21 developed under subsection (a), including any minority or
22 dissenting views of such officers.

23 (e) REGULATIONS.—Not later than 1 year after the
24 submission of the report under subsection (d), the Admin-
25 istrator of the Federal Emergency Management Agency

1 shall issue such regulations as are necessary to implement
 2 the protocol developed under subsection (a).

3 **SEC. 4. CAPACITY TO MANAGE CRITICAL SUPPLIES.**

4 Title II of the Robert T. Stafford Disaster Relief and
 5 Emergency Assistance Act (42 U.S.C. 5131 et seq.) is fur-
 6 ther amended by adding at the end the following:

7 **“SEC. 206. OFFICE OF PANDEMIC PREPAREDNESS AND RE-**
 8 **SPONSE.**

9 “(a) IN GENERAL.—The Administrator shall estab-
 10 lish an Office of Pandemic Preparedness and Response
 11 within the Federal Emergency Management Agency to co-
 12 ordinate the procurement, distribution, and tracking of
 13 the critical nonpharmaceutical materials needs of the
 14 United States, when necessary, during a public health
 15 emergency.

16 “(b) ASSOCIATE ADMINISTRATOR.—The Adminis-
 17 trator shall appoint an Associate Administrator to run the
 18 Office of Pandemic Preparedness and Response.

19 “(c) DUTIES.—

20 “(1) OFFICE.—

21 “(A) IN GENERAL.—The Office of Pan-
 22 demic Preparedness and Response shall—

23 “(i) develop and maintain a data re-
 24 pository that tracks demand for critical
 25 nonpharmaceutical materials in the event

1 of a national pandemic emergency, includ-
2 ing 30-, 60-, and 90-day demand projec-
3 tions;

4 “(ii) require the data repository de-
5 scribed in clause (i) to track inventory and
6 productive capacity to meet national crit-
7 ical nonpharmaceutical material needs, in-
8 cluding 30-, 60-, and 90-day inventory and
9 productive capacity forecasts; and

10 “(iii) develop, publish, implement, and
11 maintain a stakeholder engagement plan,
12 including ensuring that the Federal Emer-
13 gency Management Agency shall consult
14 with private-sector representatives and re-
15 gional and local public health and emer-
16 gency management organizations to coordi-
17 nate data collection, in accordance with ap-
18 plicable privacy or other data collection
19 and storage regulations or statutes.

20 “(B) NONPUBLIC INFORMATION.—The
21 data repository developed under subparagraph
22 (A) shall not be public.

23 “(C) PUBLIC INFORMATION.—The Office
24 shall make available summary information of
25 the data repository in a public format.

1 “(D) CONSULTATION.—In developing the
2 data repository and stakeholder engagement
3 plan under subparagraph (A), the Associate Ad-
4 ministrators shall consult with ASPR to avoid
5 duplication and to encourage coordinated data
6 collection and use.

7 “(E) REPORT TO CONGRESS.—Annually,
8 the Associate Administrator shall submit to
9 Congress, and make public, a report that in-
10 cludes a list of agencies or entities in compli-
11 ance and noncompliance with data collection ef-
12 forts necessary for the data repository devel-
13 oped under subparagraph (A).

14 “(2) ASSOCIATE ADMINISTRATOR.—The Asso-
15 ciate Administrator of the Office of Pandemic Pre-
16 paredness and Response shall convene exercises not
17 less than biennially with stakeholders (including sen-
18 ior representatives of the Food and Drug Adminis-
19 tration, the Department of Homeland Security, the
20 Centers for Disease Control and Prevention, the De-
21 partment of Health and Human Services (except the
22 Assistant Secretary of Health and Human Services
23 for Preparedness and Response), the National Insti-
24 tute of Health, the Veterans Affairs Administration,
25 the Department of Defense, the Indian Health Serv-

1 ice, and the United States intelligence community)
2 determined by the Associate Administrator to be es-
3 sential to the pandemic response to ensure the agen-
4 cy's readiness to procure, distribute, and track crit-
5 ical nonpharmaceutical materials during a public
6 health emergency.”.

7 **SEC. 5. PLANNING TO MEET CRITICAL SUPPLY NEEDS.**

8 (a) IN GENERAL.—The Associate Administrator of
9 the Office of Pandemic Preparedness and Response of the
10 Federal Emergency Management Agency, in coordination
11 with the Assistant Secretary of Health and Human Serv-
12 ices for Preparedness and Response, shall develop a com-
13 panion strategy to accompany the National Health Secu-
14 rity Strategy under section 2802 of the Public Health
15 Service Act (42 U.S.C. 300hh–1) in order to ensure the
16 availability of critical nonpharmaceutical supplies and the
17 ability to distribute such supplies during a public health
18 emergency that triggers the protocols under section 3 of
19 this Act.

20 (b) CONTENTS.—The companion strategy under sub-
21 section (a) shall—

22 (1) include an assessment of critical non-
23 pharmaceutical materials, particularly personal pro-
24 tective equipment and other ancillary medical sup-
25 plies, needed during a pandemic;

1 (2) take into account the best available science;

2 (3) consider different responses to differing lev-
3 els of severity of a public health emergency, based
4 on input from stakeholders, as well as from external
5 sources, including the National Academies, academic
6 sources, State, Tribal, territorial, and local govern-
7 ments, and the private sector;

8 (4) evaluate the reliability and security of sup-
9 pliers necessary to ensure the production, procure-
10 ment, and distribution of critical nonpharmaceutical
11 materials, including considering—

12 (A) supplier diversity, country of origin,
13 supply chain stability, and cybersecurity risk to
14 distribution and to production facilities;

15 (B) priority to domestic sources of supply;
16 and

17 (C) how to maximize the use of materials
18 produced in the United States in accordance
19 with section 3 of this Act; and

20 (5) include strategies for last mile distribution
21 to ensure supplies get into the possession of end
22 users.

23 (c) PUBLICATION.—Not later than 1 year after the
24 date of enactment of this Act, the Associate Administrator
25 shall submit to the relevant committees of jurisdiction of

1 the House of Representatives and the Senate and publish
2 publicly in unclassified and classified (if necessary)
3 versions.

4 (d) UPDATE.—The Associate Administrator, in con-
5 sultation with stakeholders shall update the companion
6 strategy under subsection (a) not less often than every 5
7 years.

8 (e) STAKEHOLDERS DEFINED.—In this section, the
9 term “stakeholders” means senior representatives of the
10 Food and Drug Administration, the Department of Home-
11 land Security, the Centers for Disease Control and Pre-
12 vention, the Department of Health and Human Services
13 (except the Assistant Secretary of Health and Human
14 Services for Preparedness and Response), the National In-
15 stitute of Health, the Veterans Affairs Administration, the
16 Department of Defense, the Indian Health Service, and
17 the United States intelligence community.

18 **SEC. 6. PLANNING FOR PRODUCTION.**

19 Section 319C–2(b)(1) of the Public Health Service
20 Act (42 U.S.C. 247d–3b) is amended—

21 (1) in subparagraph (A)(iv) by striking “; and”
22 and inserting a semicolon;

23 (2) in subparagraph (B) by striking “; or” and
24 inserting “; and”; and

1 (3) by inserting after subparagraph (B) the fol-
 2 lowing:

3 “(C) prepare a plan and be capable of co-
 4 ordinating inventory management activities dur-
 5 ing a national public health emergency with
 6 State and Federal officials; or”.

7 **SEC. 7. PRESERVING PRODUCTIVE CAPACITY.**

8 (a) IN GENERAL.—Section 2533a(b) of title 10,
 9 United States Code, is amended by adding at the end the
 10 following:

11 “(5) Critical nonpharmaceutical materials iden-
 12 tified under section 206 of the Robert T. Stafford
 13 Disaster Relief and Emergency Assistance Act.”.

14 (b) VETERANS ADMINISTRATION.—

15 (1) COVERED PURCHASES.—

16 (A) IN GENERAL.—Subject to subpara-
 17 graph (B), any covered item purchased by the
 18 Secretary of the Department of Veterans Af-
 19 fairs shall be from the United States. For pur-
 20 poses of this subsection, “from the United
 21 States” means that 100 percent of a product is
 22 grown, reprocessed, reused, or produced in the
 23 United States.

24 (B) EXCEPTIONS.—Notwithstanding sub-
 25 paragraph (A), the Secretary may waive the re-

1 quirements of such subparagraph if the Sec-
2 retary determines that satisfactory quality and
3 sufficient quantity of any such covered item
4 from the United States cannot be procured as
5 and when needed at United States market
6 prices. This subsection shall not apply to cov-
7 ered items that are or that include materials
8 determined to be non-available in accordance
9 with section 25.104 of title 48 of the Federal
10 Acquisition Regulation.

11 (2) EXCEPTION FOR SMALL PURCHASES.—
12 Paragraph (1) shall not apply to purchases for
13 amounts not greater than \$150,000. A proposed
14 purchase or contract for an amount greater than
15 \$150,000 may not be divided into several purchases
16 or contracts for lesser amounts in order to qualify
17 for this exception.

18 (3) APPLICABILITY.—The requirements of this
19 subsection shall apply with respect to a purchase of
20 a covered item made pursuant to paragraph (1) on
21 or after the date of the enactment of this Act.

22 (4) DEFINITION OF COVERED ITEM.—In this
23 subsection, the term “covered item” means a critical
24 nonpharmaceutical material identified under section

1 206 of the Robert T. Stafford Disaster Relief and
2 Emergency Assistance Act.

3 (c) WAIVER OF CERTAIN REQUIREMENTS.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, the Assistant Secretary of Health
6 and Human Services for Preparedness and Response
7 may waive the requirements of section 2533a(b)(5).

8 (2) REGULATIONS.—The Assistant Secretary of
9 Health and Human Services for Preparedness and
10 Response shall issue such regulations as are nec-
11 essary to implement paragraph (1).

12 (3) CONTENTS.—In issuing regulations under
13 paragraph (2), the Assistant Secretary of Health
14 and Human Services for Preparedness and Response
15 shall take into account—

16 (A) that American-made products shall be
17 prioritized in purchasing;

18 (B) that the prices to be paid should not
19 be generally within historic norms or in line
20 with current market prices;

21 (C) that when sourcing from foreign coun-
22 tries is necessary, priority should be given to
23 countries with reliable supply chains and long-
24 standing relationships with the United States;
25 and

(D) that waivers to purchase foreign-produced goods may be authorized when American-produced goods are not available in sufficient quantities, at reasonable prices, and at satisfactory quality.

SEC. 8. EXPANDING PRODUCTIVE CAPACITY AND RESILIENCE.

(a) PRODUCTIVE CAPACITY GRANTS AND TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology, in consultation with the Manufacturing Extension Partnership, shall establish a program to provide grants and technical assistance to qualified United States manufacturers that can demonstrate current capacity or future capacity to produce critical nonpharmaceutical materials identified under section 206 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act that are designated by the Assistant Secretary of Health and Human Services for Preparedness and Response as unable to be sourced in sufficient and reasonably available commercial quantities and of a satisfactory quality in the United States.

(2) APPLICATION.—To be eligible to receive a grant or technical assistance under this subsection,

1 qualified United States manufacturers shall submit
2 to the Director an application at such time, in such
3 manner, and containing such information as the Di-
4 rector may require.

5 (3) AWARENESS CAMPAIGNS.—In carrying out
6 this subsection, Manufacturing Extension Partner-
7 ship programs shall conduct awareness campaigns in
8 economically distressed areas, including qualified op-
9 portunity zones (as such term is defined in section
10 1400Z–1 of the Internal Revenue Code of 1986).

11 (4) REQUIREMENT.—In selecting grant recipi-
12 ents and providing technical assistance under this
13 subsection, the Director shall provide not less than
14 40 percent of funds made available to carry out this
15 section to economically distressed areas, including
16 qualified opportunity zones (as such term is defined
17 in section 1400Z–1 of the Internal Revenue Code of
18 1986).

19 (5) PRIORITIZATION.—In selecting grant recipi-
20 ents and providing technical assistance under this
21 subsection, the Director shall prioritize recipients
22 based on such recipient’s ability to address shortfalls
23 in the strategy developed under section 5.

1 (6) ELIGIBLE USES.—A grant provided under
2 this subsection may be used for capital investments
3 and labor.

4 (7) AUTHORIZATION OF APPROPRIATIONS.—
5 There is authorized to carry out this subsection
6 \$100,000,000 for each of fiscal years 2021 through
7 2026.

8 (b) AT-HOME EQUIPMENT GRANTS.—

9 (1) IN GENERAL.—The Director of the National
10 Institute of Standards and Technology shall estab-
11 lish a program to provide grants to support the de-
12 velopment of plans and educational materials to as-
13 sist the United States public in making temporary
14 masks or other equipment as determined appropriate
15 by the Director, at home.

16 (2) APPLICATION.—To be eligible to receive a
17 grant under this subsection, an entity shall submit
18 an application to the Director at such time, in such
19 manner, and containing such information as the Di-
20 rector may require.

21 (3) AUTHORIZATION OF APPROPRIATIONS.—
22 There is authorized to carry out this subsection
23 \$25,000,000 for each of fiscal years 2021 through
24 2026.

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