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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

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A BILL

To provide for expanded capacity to respond to pandemic disaster, 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 "Managing American Knowledge and Equipment to Prevent Pandemic Emergencies Act" or the "MAKE PPE Act".

SEC. 2. CAPACITY TO RESPOND TO PANDEMIC DISASTER.

(a) IN GENERAL.—Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) is amended by inserting ''any public health emergency (including any pandemic or virus threat),'' after ''drought),''.

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

(1) by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (8), (9), (10), and (11), respectively; and

(2) by inserting after paragraph (6) the following:

''(7) WHOLE OF SOCIETY RESILIENCY.—Developing a capacity for long-term response to a major pandemic or other infectious disease outbreak, including the manufacture and distribution of critical pharmaceutical and nonpharmaceutical supplies, including personal protective equipment, needed to slow the spread of a pandemic or other infectious disease while preserving essential functions of society.''.

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

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

''SEC. 205. CAPACITY FOR MATERIALS NEEDED.

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

''(b) COLLECTION AND DISSEMINATION OF DATA.—The Administrator shall develop the capacity to coordinate the collection and dissemination of data to track national demand for critical nonpharmaceutical materials during a major pandemic or other infectious disease outbreak of regional, national, or global scale.''.

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

(a) IN GENERAL.—The Executive Office of the President, the Administrator of the Federal Emergency Management Agency, and the Assistant Secretary of Health and Human Services for Preparedness and Response shall jointly develop a protocol under which the Federal Emergency Management Agency shall—

(1) assume responsibility for coordinating Federal procurement of critical nonpharmaceutical sup-

plies during a national public health emergency based on the severity and extent of such an emergency; and

(2) implement the companion strategy developed under section 5.

(b) COORDINATION.—In developing the protocol under subsection (a), the Executive Office of the President, the Administrator of the Federal Emergency Management Agency, and the Assistant Secretary of Health and Human Services for Preparedness and Response shall consult with the Director of the Centers for Disease Control and Prevention, the Commanding General of the Corps of Engineers, and other heads of Federal agencies determined necessary by the Administrator of the Federal Emergency Management Agency and the Assistant Secretary of Health and Human Services for Preparedness and Response.

(c) CONTENTS.—The protocol developed under subsection (a) shall—

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

and Emergency Assistance Act, added by this Act; and

(2) consider the scale and severity of an emergency in determining when and how the Federal Emergency Management Agency shall exercise authorities under the protocol, as well as the process by which the Assistant Secretary of Health and Human Services for Preparedness and Response, including the Director of the Strategic National Stockpile, shall work in coordination with the Federal Emergency Management Agency.

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Executive Office of the President, the Administrator of the Federal Emergency Management Agency, and the Assistant Secretary of Health and Human Services for Preparedness and Response shall jointly submit to the relevant committees of jurisdiction of the House of Representatives and the Senate, including the Committee on Appropriations of the House of Representatives and the Senate, a report detailing the protocol developed under subsection (a), including any minority or dissenting views of such officers.

(e) REGULATIONS.—Not later than 1 year after the submission of the report under subsection (d), the Administrator of the Federal Emergency Management Agency

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

SEC. 4. CAPACITY TO MANAGE CRITICAL SUPPLIES.

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

"SEC. 206. OFFICE OF PANDEMIC PREPAREDNESS AND RESPONSE.

''(a) IN GENERAL.—The Administrator shall establish an Office of Pandemic Preparedness and Response within the Federal Emergency Management Agency to coordinate the procurement, distribution, and tracking of the critical nonpharmaceutical materials needs of the United States, when necessary, during a public health emergency.

''(b) ASSOCIATE ADMINISTRATOR.—The Administrator shall appoint an Associate Administrator to run the Office of Pandemic Preparedness and Response.

''(c) DUTIES.—

''(1) OFFICE.—

''(A) IN GENERAL.—The Office of Pandemic Preparedness and Response shall—

''(i) develop and maintain a data repository that tracks demand for critical nonpharmaceutical materials in the event

of a national pandemic emergency, including 30-, 60-, and 90-day demand projections;

''(ii) require the data repository described in clause (i) to track inventory and productive capacity to meet national critical nonpharmaceutical material needs, including 30-, 60-, and 90-day inventory and productive capacity forecasts; and

''(iii) develop, publish, implement, and maintain a stakeholder engagement plan, including ensuring that the Federal Emergency Management Agency shall consult with private-sector representatives and regional and local public health and emergency management organizations to coordinate data collection, in accordance with applicable privacy or other data collection and storage regulations or statutes.

''(B) NONPUBLIC INFORMATION.—The data repository developed under subparagraph (A) shall not be public.

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

"(D) CONSULTATION.—In developing the data repository and stakeholder engagement plan under subparagraph (A), the Associate Administrator shall consult with ASPR to avoid duplication and to encourage coordinated data collection and use.

"(E) REPORT TO CONGRESS.—Annually, the Associate Administrator shall submit to Congress, and make public, a report that includes a list of agencies or entities in compliance and noncompliance with data collection efforts necessary for the data repository developed under subparagraph (A).

"(2) ASSOCIATE ADMINISTRATOR.—The Associate Administrator of the Office of Pandemic Preparedness and Response shall convene exercises not less than biennially with stakeholders (including senior representatives of the Food and Drug Administration, the Department of Homeland Security, the Centers for Disease Control and Prevention, the Department of Health and Human Services (except the Assistant Secretary of Health and Human Services for Preparedness and Response), the National Institute of Health, the Veterans Affairs Administration, the Department of Defense, the Indian Health Serv-

ice, and the United States intelligence community) determined by the Associate Administrator to be essential to the pandemic response to ensure the agency's readiness to procure, distribute, and track critical nonpharmaceutical materials during a public health emergency.''.

SEC. 5. PLANNING TO MEET CRITICAL SUPPLY NEEDS.

(a) IN GENERAL.—The Associate Administrator of the Office of Pandemic Preparedness and Response of the Federal Emergency Management Agency, in coordination with the Assistant Secretary of Health and Human Services for Preparedness and Response, shall develop a companion strategy to accompany the National Health Security Strategy under section 2802 of the Public Health Service Act (42 U.S.C. 300hh–1) in order to ensure the availability of critical nonpharmaceutical supplies and the ability to distribute such supplies during a public health emergency that triggers the protocols under section 3 of this Act.

(b) CONTENTS.—The companion strategy under subsection (a) shall—

(1) include an assessment of critical nonpharmaceutical materials, particularly personal protective equipment and other ancillary medical supplies, needed during a pandemic;

(2) take into account the best available science;

(3) consider different responses to differing levels of severity of a public health emergency, based on input from stakeholders, as well as from external sources, including the National Academies, academic sources, State, Tribal, territorial, and local governments, and the private sector;

(4) evaluate the reliability and security of suppliers necessary to ensure the production, procurement, and distribution of critical nonpharmaceutical materials, including considering—

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

(B) priority to domestic sources of supply; and

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

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

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

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

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

(e) STAKEHOLDERS DEFINED.—In this section, the term ''stakeholders'' means senior representatives of the Food and Drug Administration, the Department of Homeland Security, the Centers for Disease Control and Prevention, the Department of Health and Human Services (except the Assistant Secretary of Health and Human Services for Preparedness and Response), the National Institute of Health, the Veterans Affairs Administration, the Department of Defense, the Indian Health Service, and the United States intelligence community.

SEC. 6. PLANNING FOR PRODUCTION.

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

(1) in subparagraph (A)(iv) by striking ''; and'' and inserting a semicolon;

(2) in subparagraph (B) by striking ''; or'' and inserting ''; and''; and

(3) by inserting after subparagraph (B) the following:

''(C) prepare a plan and be capable of coordinating inventory management activities during a national public health emergency with State and Federal officials; or''.

SEC. 7. PRESERVING PRODUCTIVE CAPACITY.

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

''(5) Critical nonpharmaceutical materials identified under section 206 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.''.

(b) VETERANS ADMINISTRATION.—

(1) COVERED PURCHASES.—

(A) IN GENERAL.—Subject to subparagraph (B), any covered item purchased by the Secretary of the Department of Veterans Affairs shall be from the United States. For purposes of this subsection, ''from the United States'' means that 100 percent of a product is grown, reprocessed, reused, or produced in the United States.

(B) EXCEPTIONS.—Notwithstanding subparagraph (A), the Secretary may waive the re-

quirements of such subparagraph if the Secretary determines that satisfactory quality and sufficient quantity of any such covered item from the United States cannot be procured as and when needed at United States market prices. This subsection shall not apply to covered items that are or that include materials determined to be non-available in accordance with section 25.104 of title 48 of the Federal Acquisition Regulation.

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

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

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

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

(c) WAIVER OF CERTAIN REQUIREMENTS.—

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

(2) REGULATIONS.—The Assistant Secretary of Health and Human Services for Preparedness and Response shall issue such regulations as are necessary to implement paragraph (1).

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

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

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

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

qualified United States manufacturers shall submit to the Director an application at such time, in such manner, and containing such information as the Director may require.

(3) AWARENESS CAMPAIGNS.—In carrying out this subsection, Manufacturing Extension Partnership programs shall conduct awareness campaigns in economically distressed areas, including qualified opportunity zones (as such term is defined in section 1400Z–1 of the Internal Revenue Code of 1986).

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

(5) PRIORITIZATION.—In selecting grant recipients and providing technical assistance under this subsection, the Director shall prioritize recipients based on such recipient's ability to address shortfalls in the strategy developed under section 5.

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

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

(b) AT-HOME EQUIPMENT GRANTS.—

(1) IN GENERAL.—The Director of the National Institute of Standards and Technology shall establish a program to provide grants to support the development of plans and educational materials to assist the United States public in making temporary masks or other equipment as determined appropriate by the Director, at home.

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

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

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