

117TH CONGRESS
1ST SESSION

S. 308

To establish a pilot program to address shortages of testing equipment and personal protective equipment through enhanced domestic production, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2021

Mr. DURBIN (for himself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish a pilot program to address shortages of testing equipment and personal protective equipment through enhanced domestic production, 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 “Protecting Providers
5 Everywhere in America Act” or the “PPE in America
6 Act”.

1 **SEC. 2. DOMESTIC PPE PROCUREMENT PILOT PROGRAM.**

2 (a) IN GENERAL.—Section 319F–2(a) of the Public
3 Health Service Act (42 U.S.C. 247d–6b(a)) is amended
4 by adding at the end the following:

5 “(6) DOMESTIC PROCUREMENT PILOT PRO-
6 GRAM.—

7 “(A) IN GENERAL.—

8 “(i) REQUIREMENT TO PURCHASE DO-
9 MESTIC END PRODUCTS.—For the period
10 of fiscal years 2022 through 2026, subject
11 to clause (ii), the Secretary shall ensure—

12 “(I) that not less than 40 percent
13 of amounts made available under this
14 section for purposes of procuring cov-
15 ered testing equipment and personal
16 protective equipment for the stockpile
17 under paragraph (1) are allocated to
18 procurement of such equipment that
19 is a domestic end product (as defined
20 in part 25.003 of the Federal Acquisi-
21 tion Regulations maintained under
22 section 1303(a)(1) of title 41, United
23 States Code (or any successor regula-
24 tions)) manufactured by an entity or
25 entities that enter into a contract with

the Secretary to sell such equipment
to the Secretary for such purpose; and

“(II) that additional amounts
made available under this section for
the purposes described in subclause
(I), up to 100 percent of such
amounts, are allocated to procurement
of domestic end products as described
in subclause (I), provided that, with
respect to any such procurement of
domestic end products in excess of the
amount required under subclause (I),
domestic supply exists and the costs
of procuring equipment that is a do-
mestic end product are not unreason-
ably high compared to other equip-
ment that is not a domestic end prod-
uct.

“(ii) EXCEPTION.—In the event that
there is insufficient domestic end product
available for procurement to meet the
needs for certain covered testing equip-
ment and personal protective equipment
for the stockpile under paragraph (1) while
satisfying the requirement of clause (i)(I),

1 or that the cost of procuring equipment
 2 that is a domestic end product in quan-
 3 tities required under clause (i)(I) would be
 4 unreasonably high compared to other
 5 equipment that is not a domestic end prod-
 6 uct, clause (i)(I) shall apply with respect to
 7 the applicable equipment only to the extent
 8 that such equipment that is a domestic end
 9 product is available and to the extent that
 10 the cost is not unreasonable, as applicable.

11 “(B) SALE OR TRANSFER OF PPE.—

12 “(i) IN GENERAL.—With respect to
 13 any covered testing equipment and per-
 14 sonal protective equipment in the stockpile
 15 under paragraph (1), the Secretary—

16 “(I) shall assess the stock of
 17 such equipment on a regular basis,
 18 and not less frequently than—

19 “(aa) twice per year, other
 20 than during periods described in
 21 item (bb); or

22 “(bb) monthly, during any
 23 period in which the Secretary de-
 24 termines it likely that such equip-
 25 ment will be deployed, such as

1 during a public health emer-
2 gency;

3 “(II) shall communicate to man-
4 ufacturers and suppliers of such
5 equipment to the stockpile under
6 paragraph (1) if an assessment under
7 subclause (I) indicates that there will
8 be an increased need for such equip-
9 ment;

10 “(III) may, at appropriate inter-
11 vals and with respect to any such
12 equipment in such stockpile—

13 “(aa) transfer such equip-
14 ment to other agencies or oper-
15 ating divisions within the Depart-
16 ment of Health and Human
17 Services, or to the Department of
18 Defense, the Department of
19 Homeland Security, the Depart-
20 ment of Veterans Affairs, or any
21 other Federal agency or depart-
22 ment, in accordance with the
23 needs of such agencies, divisions,
24 or departments; or

1 “(bb) sell such equipment to
2 health care facilities at a com-
3 petitive price, as determined by
4 the Secretary, taking into ac-
5 count the current market pricing
6 for the applicable equipment and
7 the operational budget for the
8 stockpile; and

9 “(IV) may enter into a contract
10 or cooperative agreement with an enti-
11 ty that has expertise in supply chain
12 logistics and management to carry out
13 the activities described in this sub-
14 paragraph.

15 “(ii) GROUP PURCHASING ORGANIZA-
16 TIONS AND MEDICAL PRODUCT DISTRIBUTU-
17 TORS.—In making sales under clause
18 (i)(II)(bb), the Secretary may transact
19 with group purchasing organizations and
20 medical product distributors to facilitate
21 timeliness, logistical assistance, and appro-
22 priate pricing, and to determine appro-
23 priate amounts of covered testing equip-
24 ment and personal protective equipment
25 for applicable health care facilities.

1 “(iii) COMPENSATION TO HHS.—

2 “(I) TRANSFERS FROM OTHER
3 AGENCIES.—A Federal agency receiv-
4 ing equipment as described in clause
5 (i)(II)(aa) shall transfer to the Sec-
6 retary such amounts as the Secretary
7 and head of the applicable agency de-
8 termine to be fair compensation for
9 such equipment.

10 “(II) SALES OF PPE.—There
11 shall be transferred from the Treasury
12 to the Secretary each fiscal year, for
13 purposes of procuring covered testing
14 equipment and personal protective
15 equipment for the stockpile under
16 paragraph (1), an amount equal to
17 the sum of the amount received in the
18 previous fiscal year from sales de-
19 scribed in clause (i)(II)(bb).

20 “(C) VENDOR-MANAGED INVENTORY.—For
21 purposes of meeting the goals under subpara-
22 graph (A), and to promote efficient and predict-
23 able operations of the stockpile while mitigating
24 the risk of product expiration or shortages, the
25 Secretary may enter into arrangements,

1 through a competitive bidding process, with one
2 or more manufacturers of domestic end prod-
3 ucts to establish and utilize revolving stockpiles
4 of covered testing equipment and personal pro-
5 tective equipment managed and operated by
6 such manufacturer. Under such an arrange-
7 ment—

8 “(i) the manufacturer (or a subcon-
9 tractor or agent of the manufacturer)—

10 “(I) shall—

11 “(aa) produce or procure
12 covered testing equipment or per-
13 sonal protective equipment for
14 the stockpile under paragraph
15 (1);

16 “(bb) maintain constant
17 supply, possession, and re-stock-
18 ing capacity of such equipment in
19 such quantities as the Secretary
20 requires for purposes of the
21 stockpile under paragraph (1);
22 and

23 “(cc) fulfill or support the
24 deployment, distribution, or dis-
25 pensing functions of the stockpile

1 at the State and local levels, con-
2 sistent with paragraph (3); and

3 “(II) may sell or transfer such
4 equipment for the purposes of the
5 manufacturer’s existing inventory and
6 commercial contracts; and

7 “(ii) the Secretary shall—

8 “(I) compensate the manufac-
9 turer for the covered testing equip-
10 ment or personal protective equip-
11 ment; and

12 “(II) pay a management fee, as
13 appropriate.

14 “(D) EVALUATION AND REPORT.—

15 “(i) IN GENERAL.—The Secretary
16 shall—

17 “(I) conduct an evaluation of the
18 program under this paragraph;

19 “(II) not later than 2 years after
20 the date of enactment of this para-
21 graph, submit an interim report to
22 Congress on such program; and

23 “(III) not later than 5 years
24 after the date of enactment of this
25 paragraph, complete such evaluation

1 and submit to Congress a final report
2 on the program.

3 “(ii) CONSIDERATIONS.—The evalua-
4 tion and reports under clause (i) shall con-
5 sider how the program has impacted the
6 continuity of stockpiling and readiness for
7 the stockpile under paragraph (1), implica-
8 tions of the program on the domestic sup-
9 ply chain, cost effectiveness of the pro-
10 gram, and access to covered testing equip-
11 ment and personal protective equipment
12 for the Federal agencies and health care
13 facilities pursuant to subparagraph
14 (B)(i)(II).

15 “(E) COVERED TESTING EQUIPMENT AND
16 PERSONAL PROTECTIVE EQUIPMENT.—For pur-
17 poses of this paragraph, the term ‘covered test-
18 ing equipment and personal protective equip-
19 ment’ means diagnostic supplies (which may in-
20 clude test kits, reagents, and swabs), res-
21 pirators, masks, gloves, eye and face protection,
22 gowns, and any other appropriate ancillary
23 medical equipment or supplies related to testing
24 or personal protection that meet the Secretary’s

- 1 requirements for inclusion in the stockpile
- 2 under paragraph (1).”.

○