

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 1306

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

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The COVID–19 pandemic has exposed the
9 vulnerability of the United States supply chains for,
10 and lack of domestic production of, personal protec-
11 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
6 will enable suppliers to assess what changes, if any,
7 are needed in their manufacturing capacity to meet
8 expected 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**
7 **DOMESTICALLY MANUFACTURED PERSONAL**
8 **PROTECTIVE EQUIPMENT.**

9 (a) DEFINITIONS.—In this section:

10 (1) APPROPRIATE CONGRESSIONAL COMMIT-
11 TEES.—The term “appropriate congressional com-
12 mittees” 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, and the Committee on
17 Veterans’ Affairs of the Senate; and

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

23 (2) COVERED SECRETARY.—The term “covered
24 Secretary” means the Secretary of Homeland Secu-

1 rity, the Secretary of Health and Human Services,
2 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, head and foot cov-
9 erings, and other gear or clothing used to protect an
10 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 FOR DOMESTIC PRO-
15 Duction.—Beginning 90 days after the date of the enact-
16 ment of this Act, in order to ensure the sustainment and
17 expansion of personal protective equipment manufacturing
18 in the United States and meet the needs of the current
19 pandemic response, any contract for the procurement of
20 personal protective equipment entered into by a covered
21 Secretary, or a covered Secretary’s designee, shall—

22 (1) be issued for a duration of at least 2 years,
23 plus all option periods necessary, to incentivize in-
24 vestment in the production of personal protective

1 equipment and the materials and components there-
2 of in the United States; and

3 (2) be for personal protective equipment, in-
4 cluding the materials and components thereof, that
5 is grown, reprocessed, reused, or produced in the
6 United States.

7 (c) ALTERNATIVES TO DOMESTIC PRODUCTION.—

8 The requirement under subsection (b) shall not apply to
9 an item of personal protective equipment, or component
10 or material thereof if, after maximizing to the extent fea-
11 sible sources consistent with subsection (b), the covered
12 Secretary—

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

18 (2) certifies every 120 days that it is necessary
19 to procure personal protective equipment under al-
20 ternative procedures to respond to the immediate
21 needs of a public health emergency.

22 (d) AVAILABILITY EXCEPTION.—

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

1 (A) that is, or that includes, a material
2 listed in section 25.104 of the Federal Acquisi-
3 tion Regulation as one for which a non-avail-
4 ability determination has been made; or

5 (B) as to which the covered Secretary de-
6 termines that a sufficient quantity of a satisfac-
7 tory quality that is grown, reprocessed, reused,
8 or produced in the United States cannot be pro-
9 cured as, and when, needed at United States
10 market prices.

11 (2) CERTIFICATION REQUIREMENT.—The cov-
12 ered Secretary shall certify every 120 days that the
13 exception under paragraph (1) is necessary to meet
14 the immediate needs of a public health emergency.

15 (e) REPORT.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of the enactment of this Act, the Di-
18 rector of the Office of Management and Budget, in
19 consultation with the covered Secretaries, shall sub-
20 mit to the chairs and ranking members of the appro-
21 priate congressional committees a report on the pro-
22 curement of personal protective equipment.

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

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

8 (B) An estimate of long-term demand
9 quantities for all PPE items procured by the
10 United States.

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

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

20 (f) AUTHORIZATION OF TRANSFER OF EQUIP-
21 MENT.—A covered Secretary may transfer to the Strategic
22 National Stockpile established under section 319F-2 of
23 the Public Health Service Act (42 U.S.C. 247d-6b) any
24 excess personal protective equipment acquired under a
25 contract executed pursuant to subsection (b).

1 (g) COMPLIANCE WITH INTERNATIONAL AGREE-
2 MENTS.—The President or the President’s designee shall
3 take all necessary steps, including invoking the rights of
4 the United States under Article III of the World Trade
5 Organization’s Agreement on Government Procurement
6 and the relevant exceptions of other relevant agreements
7 to which the United States is a party, to ensure that the
8 international obligations of the United States are con-
9 sistent with the provisions of this Act.