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PPE SUPPLY CHAIN TRANSPARENCY ACT OF 2020

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 4158

TO EXAMINE THE EXTENT OF THE RELIANCE OF THE UNITED STATES ON FOREIGN PRODUCERS FOR PERSONAL PROTECTIVE EQUIPMENT DURING THE COVID-19 PANDEMIC AND PRODUCE RECOMMENDATIONS TO SECURE THE SUPPLY CHAIN OF PERSONAL PROTECTIVE EQUIPMENT



DECEMBER 14, 2020.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4158]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4158) to examine the extent of the reliance of the United States on foreign producers for personal protective equipment during the COVID–19 pandemic and produce recommendations to secure the supply chain of personal protective equipment, having considered the same, reports favorably thereon with amendments and an amendment to the title, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 4158, PPE Supply Chain Transparency Act, is to require the Administrator of the Federal Emergency Management Agency (FEMA) to produce a report that assesses the supply chain for personal protective equipment (PPE) during the COVID–19 pandemic. Following enactment of this bill, the report must be made available within 90 days to the appropriate congressional committees and the public. The contents of the report must include the amount and variation of PPE procured by FEMA from foreign manufacturers, U.S. manufacturers, and manufacturers from the People's Republic of China. In addition, the report must also in-

clude legislative recommendations to improve the domestic supply chain of PPE.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Amid one of the most devastating public health emergencies in our nation's history, first responders and health care officials throughout the United States experienced severe shortages of PPE.[1] The scarcity of PPE emerged as COVID–19 spread swiftly across the globe, leading some foreign governments, including the United States, to implement restrictions on the export of certain PPE.[2]

In China, which prior to the COVID–19 pandemic produced 50 percent of the world's PPE, export controls were reportedly exercised as efforts were focused on addressing COVID–19 domestically.[3] According to the Peterson Institute for International Economics, "[a]s the coronavirus took hold in China in January and February 2020, there was a considerable increase in Chinese demand for PPE."[4] Consequently, this led to "diminishing supplies available to the rest of the world."[5] However, in cases where PPE supplies from China were delivered, reports indicated that products were at times defective, rendering them useless in the response.[6]

In the United States, our reliance on the import of PPE became evident as health officials quickly sounded an alarm warning of the impending deficiency of PPE inventory.[7] On March 30, 2020, FEMA established the Supply Chain Stabilization Task Force, charged with "[e]xecuting a whole-of-America approach to address limited supply of critical protective and life-saving equipment."[8] As part of this effort, the Trump administration initiated Project Airbridge, a public-private partnership that transported PPE and other supplies from China, cutting down the delivery time from approximately 30 days to 48 hours, however, shortages of PPE persisted.[9] This Committee has examined the contributing causes of the PPE shortage during the 2020 coronavirus pandemic through hearings, and other oversight.[10]

To strengthen the United States' PPE supply chain, S. 4158 would require a thorough assessment, through a FEMA report, of

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[1] Andrew Jacobs, et al., *'At War With No Ammo': Doctors Say Shortage of Protective Gear Is Dire*, N.Y. Times (March 19, 2020), *available at* https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html.

[2] Kay C. Georgi, et al., *Reference Guide: Worldwide Export Controls on Face Masks and Other Medical Personal Protective Equipment*, Arent Fox (June 3, 2020), *available at* https://www.arentfox.com/perspectives/alerts/reference-guide-worldwide-export-controls-face-masks-and-other-medical-personal.

[3] Chad Brown, *China should export more medical gear to battle COVID–19*, Peterson Institute for International Economics (May 5, 2020) *available at* https://www.piie.com/blogs/trade-and-investment-policy-watch/china-should-export-more-medical-gear-battle-covid-19.

[4] *Id*.

[5] *Id*.

[6] Alice Su, *Faulty masks. Flawed tests. China's quality control problem in leading global COVID–19 fight*, Los Angeles Times (Apr. 10, 2020) *available at* https://www.latimes.com/world-nation/story/2020-04-10/china-beijing-supply-world-coronavirus-fight-quality-control.

[7] *Id*. at 1.

[8] News Release, Federal Emergency Management Agency, *FEMA COVID–19 Supply Chain Task Force: Supply Chain Stabilization* (Apr. 8, 2020), *available at* https://www.fema.gov/news-release/2020/04/08/fema-covid-19-supply-chain-task-force-supply-chain-stabilization.

[9] *Id*.

[10] See *Evaluating the Federal Government's Procurement and Distribution Strategies in Response to the COVID–19 Pandemic: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2020) (question by Sen. Josh Hawley); *The Role of the Strategic National Stockpile in Pandemic Response: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2020) (question by Sen. Josh Hawley).

its resilience and current state. This legislation seeks to contribute to multiple efforts to expand domestic capacity capability of domestic manufacturers to produce PPE and reduce our dependence on Chinese PPE imports. As healthcare workers, first responders, and other personnel continue to address COVID–19, it is imperative that they are adequately equipped with quality PPE.

III. LEGISLATIVE HISTORY

Senator Josh Hawley (R–MO) introduced S. 4158 on July 2, 2020. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senators Margaret Wood Hassan and Rick Scott later joined as cosponsors.

The Committee considered S. 4158 at a business meeting on July 22, 2020. During the business meeting, Senator Hawley offered an amendment that modifies the definition of personal protective equipment to align with the definition in the CARES Act.[11] The amendment was adopted by voice vote with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

Ranking Member Gary Peters offered an amendment that would expand the bill's reporting requirements to include a requirement that the Administrator of FEMA collect all requests from states and Indian Tribes for PPE and medical supplies and make recommendations to the President on utilizing the full authorities available under the Defense Production Act, including incentivizing domestic production of PPE. Among other things, it would also direct the President to issue rated priority purchase orders to procure equipment and supplies, including PPE, to address current gaps in medical supplies at a fair and reasonable price.

Senator Jacky Rosen and Josh Hawley offered a second degree amendment to the Peters amendment to strike the Peters language and replace it with a requirement that FEMA "evaluate and summarize" how the Defense Production Act has been used during the COVID–19 response efforts and summarize recommendations for future use to increase production of PPE. Senators Rosen and Hawley modified the amendment to strike the word "evaluate" and require just the summary of previous efforts and potential future recommendations. The second degree amendment as modified was adopted by voice vote, as was the underlying Peters amendment as amended by it, both with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

The Committee ordered the bill, as amended by the Hawley amendment and the Peters amendment as amended by the Rosen-Hawley second degree amendment as modified, reported favorably, by voice vote. Senators present were: Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen.

[11] Pub. L. No. 116–136, 116th Cong. (2020).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title as the "PPE Supply Chain Transparency Act."

Section 2. Report

This section defines PPE and requires the FEMA Administrator to consult with the Secretary of Health and Human Services to produce a report detailing the resilience of the PPE supply chain during the 2020 COVID–19 pandemic. The report shall be provided to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives, and made publicly available.

In accordance with this section, the report shall include an assessment of the volume and percentage of each type of PPE distributed by or at the direction of FEMA that was procured from foreign and domestic manufacturers. Additionally, the report is required to include an examination of the volume and percentage of PPE (including defective PPE) from manufacturers in China. The report must also include any challenges encountered related to procuring PPE from foreign manufacturers, the forecasted demand for PPE on a monthly basis for the next year as well as an analysis of whether domestic production is sufficient to meet that demand, and recommendations to secure the supply chain of PPE. Finally, the report must include a summary of the use of authorities provided under the Defense Production Act in COVID–19 response efforts and additional options to use such authorities to increase PPE production in the future.

Lastly, the bill includes a direction to amend the title of the bill to be: "A bill to examine the extent of the reliance of the United States on foreign producers for personal protective equipment during the COVID–19 pandemic and produce recommendations to secure the supply chain of personal protective equipment and to expand domestic production of personal protective equipment.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would not make changes in existing law within

the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

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