

Public comments.
Determination.

a product from a domestic source and the reasons why a domestic product was not available from a domestic source. Those explanations shall be made available on BuyAmerican.gov prior to the issuance of the waiver, and the agency shall consider public comments regarding the availability of the product before making a final determination.

(2) EXCEPTION.—An explanation under paragraph (1) is not required for a product the nonavailability of which is established by law or regulation.

Recommendations.

SEC. 70938. COMPTROLLER GENERAL REPORT.

Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report describing the implementation of this subtitle, including recommendations for any legislation to improve the collection and reporting of information regarding waivers of and exceptions to Buy American laws.

SEC. 70939. RULES OF CONSTRUCTION.

(a) DISCLOSURE REQUIREMENTS.—Nothing in this subtitle shall be construed as preempting, superseding, or otherwise affecting the application of any disclosure requirement or requirements otherwise provided by law or regulation.

(b) ESTABLISHMENT OF SUCCESSOR INFORMATION SYSTEMS.—Nothing in this subtitle shall be construed as preventing or otherwise limiting the ability of the Administrator of General Services to move the data required to be included on the website established under subsection (a) to a successor information system. Any such information system shall include a reference to BuyAmerican.gov.

Applicability.

SEC. 70940. CONSISTENCY WITH INTERNATIONAL AGREEMENTS.

This subtitle shall be applied in a manner consistent with United States obligations under international agreements.

SEC. 70941. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-REFERENCES.

(a) IN GENERAL.—Section 70932(1) is amended—

(1) in subparagraph (I), by striking “section 2533a” and inserting “section 4862”; and

(2) in subparagraph (J), by striking “section 2533b” and inserting “section 4863”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2022.

Make PPE in America Act.

Subtitle C—Make PPE in America

SEC. 70951. SHORT TITLE.

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

SEC. 70952. FINDINGS.

Congress makes the following findings:

(1) The COVID–19 pandemic has exposed the vulnerability of the United States supply chains for, and lack of domestic production of, personal protective equipment (PPE).

(2) The United States requires a robust, secure, and wholly domestic PPE supply chain to safeguard public health and national security.

(3) Issuing a strategy that provides the government’s anticipated needs over the next three years will enable suppliers to assess what changes, if any, are needed in their manufacturing capacity to meet expected demands.

(4) In order to foster a domestic PPE supply chain, United States industry needs a strong and consistent demand signal from the Federal Government providing the necessary certainty to expand production capacity investment in the United States.

(5) In order to effectively incentivize investment in the United States and the re-shoring of manufacturing, long-term contracts must be no shorter than three years in duration.

(6) To accomplish this aim, the United States should seek to ensure compliance with its international obligations, such as its commitments under the World Trade Organization’s Agreement on Government Procurement and its free trade agreements, including by invoking any relevant exceptions to those agreements, especially those related to national security and public health.

(7) The United States needs a long-term investment strategy for the domestic production of PPE items critical to the United States national response to a public health crisis, including the COVID–19 pandemic.

SEC. 70953. REQUIREMENT OF LONG-TERM CONTRACTS FOR DOMESTICALLY MANUFACTURED PERSONAL PROTECTIVE EQUIPMENT.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Health, Education, Labor, and Pensions, the Committee on Finance, and the Committee on Veterans’ Affairs of the Senate; and

(B) the Committee on Homeland Security, the Committee on Oversight and Reform, the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Veterans’ Affairs of the House of Representatives.

(2) COVERED SECRETARY.—The term “covered Secretary” means the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs.

(3) PERSONAL PROTECTIVE EQUIPMENT.—The term “personal protective equipment” means surgical masks, respirator masks and powered air purifying respirators and required filters, face shields and protective eyewear, gloves, disposable and reusable surgical and isolation gowns, head and foot coverings, and other gear or clothing used to protect an individual from the transmission of disease.

(4) UNITED STATES.—The term “United States” means the 50 States, the District of Columbia, and the possessions of the United States.

(b) CONTRACT REQUIREMENTS FOR DOMESTIC PRODUCTION.—Beginning 90 days after the date of the enactment of this Act,

Effective date.

	<p>in order to ensure the sustainment and expansion of personal protective equipment manufacturing in the United States and meet the needs of the current pandemic response, any contract for the procurement of personal protective equipment entered into by a covered Secretary, or a covered Secretary's designee, shall—</p>
Time period.	<p>(1) be issued for a duration of at least 2 years, plus all option periods necessary, to incentivize investment in the production of personal protective equipment and the materials and components thereof in the United States; and</p> <p>(2) be for personal protective equipment, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.</p> <p>(c) ALTERNATIVES TO DOMESTIC PRODUCTION.—The requirement under subsection (b) shall not apply to an item of personal protective equipment, or component or material thereof if, after maximizing to the extent feasible sources consistent with subsection (b), the covered Secretary—</p> <p>(1) maximizes sources for personal protective equipment that is assembled outside the United States containing only materials and components that are grown, reprocessed, reused, or produced in the United States; and</p> <p>(2) certifies every 120 days that it is necessary to procure personal protective equipment under alternative procedures to respond to the immediate needs of a public health emergency.</p> <p>(d) AVAILABILITY EXCEPTION.—</p> <p>(1) IN GENERAL.—Subsections (b) and (c) shall not apply to an item of personal protective equipment, or component or material thereof—</p> <p>(A) that is, or that includes, a material listed in section 25.104 of the Federal Acquisition Regulation as one for which a non-availability determination has been made; or</p> <p>(B) as to which the covered Secretary determines that a sufficient quantity of a satisfactory quality that is grown, reprocessed, reused, or produced in the United States cannot be procured as, and when, needed at United States market prices.</p> <p>(2) CERTIFICATION REQUIREMENT.—The covered Secretary shall certify every 120 days that the exception under paragraph (1) is necessary to meet the immediate needs of a public health emergency.</p> <p>(e) REPORT.—</p> <p>(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the covered Secretaries, shall submit to the chairs and ranking members of the appropriate congressional committees a report on the procurement of personal protective equipment.</p> <p>(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:</p> <p>(A) The United States long-term domestic procurement strategy for PPE produced in the United States, including strategies to incentivize investment in and maintain United States supply chains for all PPE sufficient to meet the needs of the United States during a public health emergency.</p> <p>(B) An estimate of long-term demand quantities for all PPE items procured by the United States.</p>
Certification. Time period.	
Determination.	
Time period.	
Consultation.	
Strategy.	
Estimate.	

(C) Recommendations for congressional action required to implement the United States Government’s procurement strategy. Recommendations.

(D) A determination whether all notifications, amendments, and other necessary actions have been completed to bring the United States existing international obligations into conformity with the statutory requirements of this subtitle. Determination.

(f) AUTHORIZATION OF TRANSFER OF EQUIPMENT.—

(1) IN GENERAL.—A covered Secretary may transfer to the Strategic National Stockpile established under section 319F-2 of the Public Health Service Act (42 U.S.C. 247d-6b) any excess personal protective equipment acquired under a contract executed pursuant to subsection (b).

(2) TRANSFER OF EQUIPMENT DURING A PUBLIC HEALTH EMERGENCY.—

(A) AMENDMENT.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

“SEC. 529. TRANSFER OF EQUIPMENT DURING A PUBLIC HEALTH EMERGENCY. 6 USC 321r.

“(a) AUTHORIZATION OF TRANSFER OF EQUIPMENT.—During a public health emergency declared by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary, at the request of the Secretary of Health and Human Services, may transfer to the Department of Health and Human Services, on a reimbursable basis, excess personal protective equipment or medically necessary equipment in the possession of the Department. Reimbursement.

“(b) DETERMINATION BY SECRETARIES.—

“(1) IN GENERAL.—In carrying out this section—

“(A) before requesting a transfer under subsection (a), the Secretary of Health and Human Services shall determine whether the personal protective equipment or medically necessary equipment is otherwise available; and

“(B) before initiating a transfer under subsection (a), the Secretary, in consultation with the heads of each component within the Department, shall— Consultation.

“(i) determine whether the personal protective equipment or medically necessary equipment requested to be transferred under subsection (a) is excess equipment; and

“(ii) certify that the transfer of the personal protective equipment or medically necessary equipment will not adversely impact the health or safety of officers, employees, or contractors of the Department. Certification.

“(2) NOTIFICATION.—The Secretary of Health and Human Services and the Secretary shall each submit to Congress a notification explaining the determination made under subparagraphs (A) and (B), respectively, of paragraph (1).

“(3) REQUIRED INVENTORY.—

“(A) IN GENERAL.—The Secretary shall—

“(i) acting through the Chief Medical Officer of the Department, maintain an inventory of all personal protective equipment and medically necessary equipment in the possession of the Department; and

“(ii) make the inventory required under clause (i) available, on a continual basis, to—

“(I) the Secretary of Health and Human Services; and

“(II) the Committee on Appropriations and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Appropriations and the Committee on Homeland Security of the House of Representatives.

Classified information.

“(B) FORM.—Each inventory required to be made available under subparagraph (A) shall be submitted in unclassified form, but may include a classified annex.”

(B) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (Public Law 107-296; 116 Stat. 2135) is amended by inserting after the item relating to section 528 the following:

“Sec. 529. Transfer of equipment during a public health emergency.”

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

Coordination.

“(6) TRANSFERS OF ITEMS.—The Secretary, in coordination with the Secretary of Homeland Security, may sell drugs, vaccines and other biological products, medical devices, or other supplies maintained in the stockpile under paragraph (1) to a Federal agency or private, nonprofit, State, local, tribal, or territorial entity for immediate use and distribution, provided that any such items being sold are—

Deadline.

“(A) within 1 year of their expiration date; or

Determination.

“(B) determined by the Secretary to no longer be needed in the stockpile due to advances in medical or technical capabilities.”

President.

(g) COMPLIANCE WITH INTERNATIONAL AGREEMENTS.—The President or the President’s designee shall take all necessary steps, including invoking the rights of the United States under Article III of the World Trade Organization’s Agreement on Government Procurement and the relevant exceptions of other relevant agreements to which the United States is a party, to ensure that the international obligations of the United States are consistent with the provisions of this subtitle.

TITLE X—ASSET CONCESSIONS

SEC. 71001. ASSET CONCESSIONS.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—Chapter 6 of title 23, United States Code, is amended by adding at the end the following:

23 USC 611.

“§ 611. Asset concessions and innovative finance assistance

“(a) DEFINITIONS.—In this section:

“(1) APPROVED INFRASTRUCTURE ASSET.—The term ‘approved infrastructure asset’ means—

“(A) a project (as defined in section 601(a)); and

“(B) a group of projects (as defined in section 601(a)) considered together in a single asset concession or long-term lease to a concessionaire by 1 or more eligible entities.