

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for the expedited and transparent procurement and distribution of equipment and supplies needed to combat COVID–19.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 4049

To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, 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 intended to be proposed by Ms. BALDWIN

Viz:

1 At the end of title X, add the following:

2 **Subtitle H—Transparency and**
3 **Delivery of Medical Supplies**

4 **SEC. 1091. SHORT TITLE.**

5 This subtitle may be cited as the “Medical Supply
6 Transparency and Delivery Act”.

1 **SEC. 1092. EMERGENCY PRODUCTION OF MEDICAL EQUIP-**
2 **MENT AND SUPPLIES TO ADDRESS COVID-19.**

3 (a) EXECUTIVE OFFICER FOR CRITICAL MEDICAL
4 EQUIPMENT AND SUPPLIES.—

5 (1) APPOINTMENT.—Not later than 3 days
6 after the date of the enactment of this Act, the Sec-
7 retary of Defense shall appoint, detail, or tempo-
8 rarily assign a civilian to serve as the Executive Of-
9 ficer for Critical Medical Equipment and Supplies
10 (in this section referred to as the “Executive Offi-
11 cer”), who shall—

12 (A) direct, through the National Response
13 Coordination Center of the Federal Emergency
14 Management Agency, the national production
15 and distribution of critical medical equipment
16 and supplies, including personal protective
17 equipment, in support of the response of the
18 Federal Emergency Management Agency to the
19 Coronavirus Disease 2019 (commonly known as
20 “COVID-19”); and

21 (B) report directly to the Administrator of
22 the Federal Emergency Management Agency
23 for the duration of the appointment, detail, or
24 temporary assignment.

25 (2) QUALIFICATIONS.—The Secretary of De-
26 fense, in consultation with the Administrator of the

1 Federal Emergency Management Agency, shall se-
2 lect the individual to serve as the Executive Officer
3 from among individuals with sufficient experience in
4 defense and industrial acquisition and production
5 matters, including such matters as described in sec-
6 tion 668(a)(1)(B) of title 10, United States Code.

7 (3) AUTHORITIES.—The Executive Officer, act-
8 ing through the National Response Coordination
9 Center and in direct consultation with the Secretary
10 of Homeland Security, the Secretary of Defense, the
11 Secretary of Health and Human Services, and the
12 Secretary of Commerce, shall use all available Fed-
13 eral acquisition authorities, including the authorities
14 described under sections 101(b), 102, 301, 302, 303,
15 704, 705, 706, 708(c) and (d), and 710 of the De-
16 fense Production Act of 1950 (50 U.S.C. 4511(b),
17 4512, 4531, 4532, 4533, 4554, 4555, 4556, 4558
18 (c) and (d), and 4560), to oversee all acquisition and
19 logistics functions related to the response by the Na-
20 tional Response Coordination Center to COVID–19.

21 (4) RESPONSIBILITIES.—The Executive Officer,
22 as the officer overseeing the acquisition and logistics
23 functions of the response by the National Response
24 Coordination Center to COVID–19, shall—

1 (A) receive all requests for equipment and
2 supplies, including personal protective equip-
3 ment, from States and Indian Tribes;

4 (B) make recommendations to the Presi-
5 dent on utilizing the full authorities available
6 under the Defense Production Act of 1950 (50
7 U.S.C. 4501 et seq.) to increase production ca-
8 pacity as identified under subparagraphs (C)
9 and (H) of subsection (c)(1);

10 (C) ensure that allocation of critical re-
11 sources is carried out in a manner consistent
12 with the needs identified in the reports required
13 by subsection (c);

14 (D) direct, in consultation with the Federal
15 Emergency Management Agency, the Depart-
16 ment of Health and Human Services, the De-
17 fense Logistics Agency, and other Federal agen-
18 cies as appropriate, all distribution of critical
19 equipment and supplies to the States and In-
20 dian Tribes, through existing commercial
21 distributors where practical;

22 (E) communicate with State and local gov-
23 ernments and Indian Tribes with respect to
24 availability and delivery schedule of equipment
25 and supplies;

1 (F) contribute to the COVID–19 strategic
2 testing plan required by title I of division B of
3 the Paycheck Protection Program and Health
4 Care Enhancement Act (Public Law 116–139)
5 to ensure the Secretary of Health and Human
6 Services includes in that plan a comprehensive
7 plan to scale production and optimize distribu-
8 tion of COVID–19 tests, including molecular,
9 antigen, and serological tests, in the United
10 States; and

11 (G) establish, in direct consultation with
12 the Secretary of Health and Human Services,
13 and the heads of any other appropriate Federal
14 agencies, a comprehensive plan to address nec-
15 essary supply chain issues in order to rapidly
16 scale up production of a SARS–CoV–2 vaccine.

17 (5) TRANSPARENCY.—The Executive Officer
18 shall make available, including on a publicly avail-
19 able website, information, updated not less fre-
20 quently than every 3 days, including—

21 (A) the reports required by subsection (c);

22 (B) requests for equipment and supplies
23 from State governments and Indian Tribes;

24 (C) standards used for data collection;

1 (D) modeling and any formulas used to de-
2 termine allocation of equipment and supplies,
3 and any related chain of command making final
4 decisions on allocations;

5 (E) the amount and destination of equip-
6 ment and supplies delivered;

7 (F) an explanation of why any portion of
8 a purchase order placed under subsection (d),
9 whether to replenish the Strategic National
10 Stockpile or otherwise, will not be filled;

11 (G) the percentage amounts of procured
12 products used to replenish the Strategic Na-
13 tional Stockpile, targeted to COVID-19
14 hotspots, or going into the commercial market;

15 (H) metrics, formulas, and criteria used to
16 determine hotspots or areas of critical need at
17 the State, county, and Indian Health Service
18 area level;

19 (I) production and procurement bench-
20 marks, where practicable; and

21 (J) results of the outreach and stakeholder
22 reviews required by subsection (c).

23 (6) ADDITIONAL PERSONNEL.—The Secretary
24 of Defense may detail members of the armed forces
25 on active duty, or additional civilian employees of

1 the Department of Defense, as appropriate, with rel-
2 evant experience in acquisition matters, to support
3 the Executive Officer.

4 (7) TERMINATION.—The office of the Executive
5 Officer shall terminate 30 days after the Executive
6 Officer certifies in writing to Congress that all needs
7 of States and Indian Tribes identified in reports
8 submitted under subsection (c) have been met and
9 all Federal Government stockpiles have been replen-
10 ished.

11 (b) COMMERCIAL SECTOR PARTICIPATION.—

12 (1) IN GENERAL.—The Executive Officer shall
13 collect and compile data from each of the commer-
14 cial distributors that is able to fulfill purchase orders
15 authorized by this subtitle through the Federal
16 Emergency Management Agency, the Defense Logis-
17 tics Agency, the Department of Health and Human
18 Services, the Department of Veterans Affairs, and
19 any other appropriate Federal agencies.

20 (2) DATA INCLUDED.—The data to be collected
21 and compiled under paragraph (1) includes—

22 (A) the name and address of each delivery
23 of supplies and equipment under a purchase
24 order authorized by this subtitle;

1 (B) the number of such supplies and
2 equipment delivered; and

3 (C) the date of each such delivery.

4 (c) REPORTS REQUIRED.—

5 (1) IN GENERAL.—Not later than 7 days after
6 the date of the enactment of this Act, and every 7
7 days thereafter until the termination date described
8 in subsection (a)(7), the Executive Officer, in coordi-
9 nation with the National Response Coordination
10 Center of the Federal Emergency Management
11 Agency, the Defense Logistics Agency, the Depart-
12 ment of Health and Human Services, the Depart-
13 ment of Veterans Affairs, and other Federal agen-
14 cies as appropriate, shall submit to Congress and the
15 President, and publish in a timely manner in the
16 Federal Register a summary of, a report including—

17 (A) an assessment of the needs of the
18 States and Indian Tribes for equipment and
19 supplies necessary to prevent, identify, mitigate,
20 and recover from cases of COVID–19, including
21 personal protective equipment, ventilators, test-
22 ing supplies, construction supplies, and emer-
23 gency food sources, for each month during the
24 2-year period beginning on the date of the en-
25 actment of this Act;

1 (B) an assessment of the quantities of
2 equipment and supplies in the Strategic Na-
3 tional Stockpile as of the date of the report and
4 the projected gap between the quantities of
5 equipment and supplies identified as needed in
6 the assessment under subparagraph (A) and the
7 quantities in the Stockpile;

8 (C) an identification of the industry sec-
9 tors and manufacturers most ready to fulfill
10 purchase orders for such equipment and sup-
11 plies, including manufacturers that may be
12 incentivized, through the exercise of authority
13 under section 303(e) of the Defense Production
14 Act of 1950 (50 U.S.C. 4533(e)), to modify, ex-
15 pand, or improve production processes to manu-
16 facture such equipment and supplies;

17 (D) an estimate of the funding and other
18 measures necessary to rapidly expand manufac-
19 turing production capacity for such equipment
20 and supplies, including—

21 (i) any efforts to expand, retool, or re-
22 configure production lines;

23 (ii) any efforts to establish new pro-
24 duction lines through the purchase and in-
25 stallation of new equipment; or

1 (iii) the issuance of additional con-
2 tracts, purchase orders, purchase guaran-
3 tees, or other similar measures;

4 (E) an identification of government and
5 privately owned stockpiles of equipment and
6 supplies not included in the Strategic National
7 Stockpile that could be repaired or refurbished;

8 (F) an identification of previously distrib-
9 uted critical supplies that can be redistributed
10 based on current need;

11 (G) an identification of critical areas of
12 need by county and Indian Health Service area
13 in the United States and the metrics and cri-
14 teria for their identification as critical;

15 (H) an inventory of the national produc-
16 tion capacity for equipment and supplies identi-
17 fied as needed in the assessment under sub-
18 paragraph (A); and

19 (I) an identification of the needs of essen-
20 tial employees and healthcare workers based on
21 regular stakeholder reviews.

22 (2) FORM OF REPORTS.—Each report required
23 by paragraph (1) shall be submitted in unclassified
24 form but may include a classified annex.

25 (d) PURCHASE ORDERS.—

1 (1) IN GENERAL.—Not later than 1 day after
2 receiving a report required under subsection (c), the
3 President, using authorities provided under the De-
4 fense Production Act of 1950 (50 U.S.C. 4501 et
5 seq.), shall—

6 (A) establish a fair and reasonable price
7 for the sale of equipment and supplies identified
8 in the reports required by subsection (c); and

9 (B) issue rated priority purchase orders
10 pursuant to Department of Defense Directive
11 4400.1, part 101, subpart A of title 45, Code
12 of Federal Regulations, or any other applicable
13 acquisition authority, to procure equipment and
14 supplies identified in the reports required by
15 subsection (c).

16 (2) DISPOSITION OF UNUSED EQUIPMENT AND
17 SUPPLIES.—Any equipment or supplies produced
18 pursuant to paragraph (1) using amounts from the
19 Defense Production Act Fund and in excess of needs
20 identified in reports required by subsection (c) shall
21 be deposited in the Strategic National Stockpile.

22 (3) AUTHORIZATION OF CONGRESS TO IMPOSE
23 PRICE CONTROLS.—Paragraph (1)(A) shall be
24 deemed to be a joint resolution authorizing the im-
25 position of price controls for purposes of section

1 104(a) of the Defense Production Act of 1950 (50
2 U.S.C. 4514(a)).

3 (e) WAIVER OF CERTAIN REQUIREMENTS.—The re-
4 quirements of sections 301(d)(1)(A), 302(d)(1), and sub-
5 paragraphs (B) and (C) of section 303(a)(6) of the De-
6 fense Production Act of 1950 (50 U.S.C. 4531(d)(1)(A),
7 4532(d)(1), and 4533(a)(6)) are waived for purposes of
8 this section until the termination date described in sub-
9 section (a)(6).

10 (f) FUNDING.—Amounts available in the Defense
11 Production Act Fund under section 304 of the Defense
12 Production Act of 1950 (50 U.S.C. 4534) shall be avail-
13 able for purchases made under this section.

14 (g) DEFINITIONS.—In this section:

15 (1) INDIAN TRIBE.—The term “Indian Tribe”
16 has the meaning given the term “Indian tribe” in
17 section 4 of the Indian Self-Determination and Edu-
18 cation Assistance Act (25 U.S.C. 5304).

19 (2) INDIAN HEALTH SERVICE AREA.—The term
20 “Indian Health Service area” has the meaning given
21 the term “Service area” in section 4 of the Indian
22 Health Care Improvement Act (25 U.S.C. 1603).

23 (3) STATE.—The term “State” means each
24 State of the United States, the District of Columbia,
25 the Commonwealth of Puerto Rico, American

1 Samoa, Guam, the Commonwealth of the Northern
2 Mariana Islands, the Virgin Islands of the United
3 States, and any other territory or possession of the
4 United States.

5 (4) UNIFORMED SERVICES.—The term “uni-
6 formed services” has the meaning given that term in
7 section 101 of title 37, United States Code.

8 **SEC. 1093. ANNUAL COMPTROLLER GENERAL REPORT.**

9 Not later than 180 days after the date of the enact-
10 ment of this Act, and annually thereafter, the Comptroller
11 General of the United States shall submit to Congress a
12 report assessing the Strategic National Stockpile, includ-
13 ing—

14 (1) recommendations for preparing for and re-
15 sponding to future pandemics;

16 (2) recommendations for changes to the Stra-
17 tegic National Stockpile, including to the manage-
18 ment of the stockpile;

19 (3) in the case of the first report required to be
20 submitted under this section—

21 (A) an assessment with respect to how
22 much personal protective equipment used for
23 the COVID–19 response was sourced within the
24 United States and how much was sourced from

1 the People’s Republic of China and other for-
2 eign countries; and

3 (B) recommendations with respect to how
4 to ensure that the United States supply chain
5 for personal protective equipment is better
6 equipped to respond to emergencies, including
7 through the use of funds in the Defense Pro-
8 duction Act Fund under section 304 of the De-
9 fense Production Act of 1950 (50 U.S.C. 4534)
10 to address shortages in that supply chain; and
11 (4) in the case of each subsequent report re-
12 quired to be submitted under this section—

13 (A) an assessment with respect to how
14 much personal protective equipment was im-
15 ported into the United States in the year pre-
16 ceeding submission of the report and, of that
17 equipment, how much would be used to prepare
18 for and respond to a future pandemic; and

19 (B) a review of the implementation during
20 that year of the recommendations required by
21 paragraph (3)(B).

22 **SEC. 1094. OVERSIGHT.**

23 (a) IN GENERAL.—The Chairperson of the Council
24 of the Inspectors General on Integrity and Efficiency shall
25 designate any Inspector General responsible for con-

1 ducting oversight of any program or operation performed
2 in support of this subtitle to oversee the implementation
3 of this subtitle, to the maximum extent practicable and
4 consistent with the duties, responsibilities, policies, and
5 procedures of that Inspector General.

6 (b) REMOVAL.—The designation of an Inspector Gen-
7 eral under subsection (a) may be terminated only for per-
8 manent incapacity, inefficiency, neglect of duty, malfea-
9 sance, or conviction of a felony or conduct involving moral
10 turpitude.