

## Onshoring Critical Medical Supply Chains Becomes Focal Point of New Legislation

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### Key Points

- Legislation to bolster the U.S. supply chain for medical equipment becomes an issue of bipartisan focus in Congress.
- Differing proposals included in the House and Senate “Phase 4” COVID-relief proposals as well stand-alone bills increase the likelihood of congressional action this year.

Sens. Lindsey Graham (R-SC), Shelly Moore Capito (R-WV) and Mike Rounds (R-SD) introduced the U.S. MADE Act of 2020 (S. 4264) on July 22 to limit the procurement of certain personal protective equipment (PPE) and other medical supplies for the Strategic National Stockpile (SNS) to only “domestically produced” sources and establish a tax credit to incentivize PPE manufacturing in the United States. The legislation was incorporated with modifications into the Senate Republican “Phase 4” COVID-relief proposal, known as the Heath, Economic Assistance, Liability Protection and Schools (HEALS) Act, and will be addressed in the ongoing negotiations between Congress and the administration.

The House-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800, passed on May 15) also contains extensive supply chain provisions, including the creation of a \$2 billion pilot program to enhance medical supply chain elasticity and maintain domestic reserves of critical medical supplies. The HEROES Act provision expands upon a similar \$500 million proposal contained in the Medical Supplies for Pandemics Act of 2020 as introduced in the Senate (S. 3827) by Sen. Tom Tillis (R-NC) and House (H.R. 6531) by Rep. Debbie Dingell (D-MI). The bipartisan, bicameral interest in these issues suggests a potential area of compromise going forward.

The Senate Finance Committee conducted a two-day hearing on July 28 and July 30, during which senators from both parties raised concerns about the strength of the U.S. medical supply chain. Sen. Sherrod Brown (D-OH), who previously partnered with Sen. Rob Portman (R-OH) on a related initiative, indicated he would introduce additional legislation to boost domestic production of PPE.

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## Summary of US MADE Act (S. 4264)

**SNS Acquisition Limited to U.S.-Produced Goods.** The U.S. MADE Act is modeled after the Berry Amendment, the **statutory requirement** that the Department of Defense must give preference to domestically produced or manufactured products in procurement, and outlines acquisition requirements for PPE and other medical equipment included in the SNS. If enacted, the U.S. MADE Act would prohibit any funding to be used for the procurement of items declared national priorities, either as end products or components, unless the items have been grown, reprocessed, reused or produced in the United States. Items declared national priorities by the U.S. MADE Act include:

- Testing swabs
- Surgical and respirator masks
- Face shields
- Surgical and isolation gowns
- Head and foot coverings
- Sanitizing and disinfecting wipes
- Gauzes and bandages
- Privacy curtains, beds and bedding
- Tents, tarpaulins, covers or bags.

**Exceptions.** The bill exempts small purchases of \$150,000 or less, and the measure provides an exception for items for which it has been determined that sufficient quantity of satisfactory quality cannot be procured when needed at U.S. market prices or for which a nonavailability determination has been made pursuant to the Federal Acquisition Regulation.

**Tax Credit.** Additionally, the legislation establishes an investment credit for qualifying PPE manufacturing projects, for which eligible U.S. manufacturers will receive a 30 percent credit against equipment costs associated with PPE manufacturing. Under the bill, qualifying medical PPE manufacturing projects would re-equip, expand, establish or continue existing medical PPE production of any item covered by the SNS or any textile products for medical applications as identified by the Secretary of Treasury in consultation with the Secretary of Health and Human Services.

Manufacturers must submit an application to the Secretary of the Treasury to receive an allocation of the credits, and the total amount of credits available is limited to \$7.5 billion. The bill directs the Treasury Secretary to select projects that show the greatest potential for domestic job creation and retention, provide the largest amount of needed PPE, have the greatest potential to meet surge demand for PPE and provide for U.S. PPE independence.

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