

# Key Gov't Tools For Addressing National PPE Shortages

By **Sarah Rathke** (October 27, 2020)

The COVID-19 pandemic has revealed both shortages and shortcomings in U.S. supply chains that provide personal protective equipment to health care facilities, nursing homes and now sometimes even schools and retail establishments that need them. Typically, this PPE consists of respirators, gowns of varying grades, gloves, hand sanitizer and face shields.



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To date, the federal government has made some overtures toward normalizing the PPE supply chain and market, but not enough to solve PPE shortages, which the Government Accountability Office[1] and others have warned still exist, and will continue to exist as the U.S. enters the worrisome fall and winter season.

## The Problem

When COVID-19 hit, it disrupted the PPE supply required by health care providers. Previously, a relatively stable supply chain, hospitals and other PPE purchasers were quickly overwhelmed by the prospect of trying to secure needed PPE supplies in a market that simply was not producing enough of them.

This enabled and facilitated the emergence of a shadowy PPE broker market, in which various individuals and entities, styling themselves as brokers, pledged to assist in locating and delivering these much-needed supplies.

Some brokers were legitimate, and had proven histories in the medical industry or at least in importing foreign goods. Others were opportunistically formed companies with no relevant experience. But sometimes in both instances, brokers struggled to secure shipments of PPE in circumstances of limited manufacture and supply.

Broker-driven PPE transaction structures evolved to requiring PPE proof-of-life videos (which often proved very little), proof of funds demonstrations (same), supposed nondisclosure and noncompete agreements between brokers (routinely broken), and multilayered broker transactions, many of which fell apart before completion. Meanwhile, PPE buyers — who genuinely and tragically needed the goods — were often left without.

In some instances, the result has been multimillion-dollar payments to brokers without the buyers receiving product in return. In some instances, this has led to lawsuits to recover these payments, sometimes against entities that quickly closed up shop or that are otherwise uncollectable.

Other unfortunate byproducts of the chaotic PPE market include attorney general actions for price-gouging and legal actions by legitimate manufacturers of PPE against counterfeit or gray-market sellers.

The federal government has so far taken a light hand in steadying the PPE market. To be sure, various government actors have attempted to draw attention to the problem. Early in the pandemic, the president invoked the Defense Production Act to induce private companies to produce PPE and to prohibit N95 manufacturer, 3M Co., from exporting supplies.

But that resulted in only a handful of companies receiving PPE contracts. The U.S. Food and Drug Administration extended emergency use authorizations to allow new PPE suppliers to enter the market, although in several instances has had to rescind them following the discovery of unreliable products.

The Coronavirus Aid, Relief and Economic Security Act authorized \$1 billion for pandemic funding, but much of that was rerouted to defense contractors, it was recently discovered.[2] And the supplies in the Strategic National Stockpile were distributed, but were not nearly adequate to meet the level of need.

Otherwise, private markets have been left to sort out the PPE crisis and, mostly, have failed.

## **The Solutions**

The federal government has a number of tools at its disposal that can be used to mitigate the PPE crisis, and indeed, unless it intervenes, there is no reason to believe that PPE problems will solve themselves.

First, the Defense Production Act. Contrary to the insinuation of some in the current administration[3] that the DPA should only be invoked as a measure of last resort, since the DPA was enacted to deal with wartime materials shortages during the Korean War in 1950, the DPA has been used to distribute millions of federal dollars[4] every year since 1950, when America needs it.

The DPA allows the president to incentivize the domestic industrial base to expand the production and supply of critical material and goods, among other powers. The DPA even allows the government to employ people of outstanding experience and ability to advise it in stabilizing the PPE market.

Second, other financial incentives. The federal government can also act to provide incentives to expand the domestic manufacturing capacity for needed PPE products. Take face shields. Now very much in demand by hospitals and nursing care centers, before the COVID-19 crisis, face shields were typically produced in China, not in the U.S.

After coronavirus struck, the U.S. acted slowly to ensure a material share of the Chinese supply, and in many cases, China directed its face shields elsewhere, often as part of humanitarian efforts. They need to be produced here, and Congress can incentivize that through stimulus legislation. There is even an argument to be made that the president can simply make incentive funding available under the DPA.

Third, information gathering. Part of what makes the current PPE crisis so acute is the unknowns. There is no obvious source of information as to what either the PPE supply or demand is likely to be in the months to come. The federal government can help to spearhead this fact-finding effort with the help of state and local governments, the major health systems, medical experts and mathematical modelers.

Granted, predicting the peaks and valleys of the coronavirus with precision has proved elusive thus far, some normalization of the market can be achieved by simply assessing what the PPE needs are likely to be, and where shortfalls are likely to arise.

Finally, the Strategic National Stockpile, which received its first real test under President

George W. Bush following Sept. 11, 2001, has played a role in addressing previous crises including the H1N1 pandemic in 2009.

The knock on the Strategic National Stockpile has always been that its planning capabilities have always exceeded its response achievements. However, with the right resources and professionals, this is fixable. And the Strategic National Stockpile's greatest strength may be in its ability to act as a supplemental resource, smoothing out uneven resource distributions between markets.

A disciplined Strategic National Stockpile response, coupled with rigorous PPE information gathering would take significant strain off struggling medical systems.

## **Conclusion**

The U.S. has stumbled to equip its medical providers with the PPE needed to safely respond to the COVID-19 crisis. But the crisis is not ending. Now is the time to dedicate greater federal resources to ensuring an adequate distribution of PPE. Moreover, many of the needed innovations in the PPE setting can be cross-deployed to the vaccine supply chain, when it becomes available. Inaction is no longer an option.

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[1] <https://www.gao.gov/reports/GAO-20-701/>.

[2] <https://thehill.com/policy/defense/517520-pentagon-redirected-pandemic-funds-to-defense-contractors-report>.

[3] <https://www.npr.org/2020/03/25/821285204/trump-sends-mixed-messages-about-invoking-defense-production-act>.

[4] <https://www.everycrsreport.com/reports/R43767.html>.