



**One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515**

March 23, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Alex M. Azar, II
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Wolf and Secretary Azar:

I write today to seek the documents and information necessary to enable the Committee to understand the current amount of personal protective equipment (PPE) and other critical medical equipment and supplies such as ventilators, swabs, and testing reagents available in the Strategic National Stockpile (SNS), the amounts being distributed to the states and territories, and the amount of PPE and medical supplies currently on order by the Federal government. The Committee also seeks information regarding the Federal strategy to distribute and allocate the PPE, supplies, and equipment in the SNS. Given the rapid increase in the number of coronavirus cases in the U.S., it is critical that we have a full and accurate account of the availability of the medical supplies needed to test and treat the American public and I therefore ask that the Administration provide this essential information to the Committee by Friday.

As we combat the coronavirus pandemic, the shortage of PPE, medical supplies, and medical equipment has become so dire that the Centers for Disease Control and Prevention (CDC) has issued the stunning recommendation that, as a last resort, healthcare professionals should consider using bandanas to cover their faces when treating patients if actual masks are not available.¹ As leadership of the nation's emergency response to the coronavirus pandemic has just shifted from the Department of Health and Human Services (HHS) to the Federal Emergency Management Agency (FEMA), I am writing to you both seeking the documents needed to enable the Committee to understand the steps being taken to get PPE, medical supplies, and medical equipment to the healthcare providers who need it now.

¹ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), "Strategies for Optimizing the Supply of Facemasks (accessed on March 22, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html).

Governors and healthcare providers are warning that the shortage of PPE, medical supplies, and medical equipment threatens to imperil the ability of doctors, nurses, and other healthcare workers to safely test and treat patients with COVID-19. Healthcare workers fear for their own health and they fear they could spread coronavirus to other patients and even their own family members.² Responding to the shortage, the CDC has created a page on its website entitled “Strategies for Optimizing the Supply of Facemasks,” which enumerates “a series of strategies or options to optimize supplies of facemasks in healthcare settings when there is limited supply.” Among the “Contingency Capacity Strategies” offered by the CDC are the following:

“Use facemasks beyond the manufacturer-designated shelf life during patient care activities.”

“Implement limited re-use of facemasks.”³

On Friday, the Members of the Committee held a conference call with FEMA Administrator Peter Gaynor. During the call, Committee Members were told that states would be receiving pro rata shares of PPE from the SNS to “make sure everyone gets a slice of what they need.” Administrator Gaynor indicated that states with the greatest need are being prioritized to receive shipments of PPE.⁴

Members were also told that because FEMA was not able to track the specific movements of such shipments while they were in transit, FEMA could not say exactly when states would receive their shipments—but that FEMA was working to improve its ability to track shipments.⁵

Members were told that requests for supplies are collected from local jurisdictions by state emergency managers, who validate these requests and then share them with FEMA’s regional managers. Members were told that by the end of last Friday, FEMA would have a “full view” of all the requests for assistance that FEMA has received and all of the requests that had been made of HHS would have been entered into the FEMA tracking system.⁶

Finally, Administrator Gaynor stated that HHS had just signed a “\$500 million” contract for masks to be delivered over the next 18 months. However, Members were not given any details about the contract, including vital information such as when the first shipment of masks would

² New York Times, “‘At War With No Ammo’: Doctors Say Shortage of Protective Gear Is Dire” (March 19, 2020) (online at www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html).

³ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), “Strategies for Optimizing the Supply of Facemasks (accessed on March 22, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html).

⁴ Administrator Peter T. Gaynor, Federal Emergency Management Agency, Call with Chairman Bennie G. Thompson, et. al., Committee on Homeland Security (March 20, 2020).

⁵ *Id.*

⁶ *Id.*

be delivered by the contractor, how many masks would be contained in the first shipment, and the dates and quantities of subsequent shipments over the next year and a half.⁷

Over the weekend, Administrator Gaynor was still unable to provide any specific numbers regarding the availability of PPE in the SNS or the schedule for distribution of this essential equipment to the states. For example, after the Administrator was asked when states will begin receiving shipments of PPE from the SNS, he stated:

“Well, I mean, there’s hundreds of thousands of—millions of things that we’re shipping from the stockpile. I mean, I can’t give you the details about what every single state or what every single city’s doing. But—but I’m telling you that we are shipping from our national stockpile. We’re shipping from vendors. We’re shipping from donations. It is happening.”⁸

I appreciate that FEMA and HHS are working around the clock to combat the coronavirus pandemic. To enable the Committee to understand the supplies of PPE the Federal government is purchasing—as well as the amount of PPE and critical medical equipment such as ventilators and other supplies available in the SNS, the distributions that have been made across the U.S., and the pending requests for supplies—I request to receive by March 27 the following, which should be readily available and easily provided to the Committee:

1. Copies of all solicitations and contracts for masks signed by HHS since December 1, 2019, including the contract(s) referenced by Administrator Gaynor, together with all related attachments and appendices;
2. Copies of all solicitations and contracts signed by FEMA or HHS for any form of PPE, medical supplies, and medical equipment since December 1, 2019, including all attachments and appendices to such solicitations and contracts; and
3. Documents sufficient to show:
 - The total amount of each type of PPE, supplies, and medical equipment in the SNS as of December 1, 2019; January 1, 2020; February 1, 2020, March 1, 2020, and March 22, 2020;
 - The amount of each type of PPE, supplies, and medical equipment requested from the SNS by each state, territory, and the District of Columbia on any date from December 1, 2019, through March 22, 2020;
 - The date and quantity of each shipment of PPE, supplies, and medical equipment from the SNS to each state, territory, and the District of Columbia from December 1, 2019, through March 22, 2020;
 - The anticipated quantity of each type of PPE, supplies, and medical equipment needed by each state, territory, and the District of Columbia from December 1, 2020, to July 1, 2020;

⁷ *Id.*

⁸ ABC News, “‘This Week’ Transcript 3-22-20: FEMA Administrator Pete Gaynor, Gov. Phil Murphy, Gov. Gretchen Whitmer” (March 22, 2020) (online at <https://abcnews.go.com/Politics/week-transcript-22-20-fema-administrator-pete-gaynor/story?id=69733494>).

4. Documents sufficient to show whether there is enough PPE, supplies, and medical equipment to meet the anticipated need to respond to the coronavirus pandemic;
and
5. Documents sufficient to show the Federal government's strategy to distribute and allocate the PPE, supplies, and equipment in the SNS to each state, territory, and the District of Columbia in response to the coronavirus pandemic.

Thank you in advance for your attention to this request.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive style with a large, stylized initial "B".

BENNIE G. THOMPSON
Chairman

Responding to Requests for Documents from the Committee on Homeland Security

Produce all documents responsive to the Committee's request that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.

In the event that compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by the specified return date. Together with any partial production, include (1) an explanation of why full compliance by the specified date was not possible and (2) identification of the date by which full compliance will be achieved.

In addition:

1. The fact that any other person or entity also possesses non-identical or identical copies of the same documents requested by the Committee shall not be a basis to withhold any information.
2. The pendency of or potential for litigation shall not be a basis to withhold any information.
3. In accordance with 5 U.S.C. §552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
4. Pursuant to 5 U.S.C. §552a(b)(9), the Privacy Act shall not be a basis for withholding any information.
5. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control. If known, identify the party that currently possesses or has custody or control of the document.
6. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read to include that alternative identification.
7. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise

apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

8. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

Means of Production

1. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
2. Each production should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
3. All documents shall be Bates-stamped sequentially and produced sequentially.
4. Documents produced in response to this request shall be produced together with copies of file labels, dividers, and identifying markers with which they were associated when the request was served.
5. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Privilege Log

In the event that a document is withheld from the Committee, provide a privilege log containing the following information concerning any such document:

1. every privilege asserted;
2. the basis for the privilege(s) asserted;
3. the type of document;
4. the general subject matter;
5. the date, author, addressee, and any other recipient(s); and
6. the relationship of the author and addressee to each other.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.