

FEDERAL EMERGENCY PANDEMIC
RESPONSE ACT

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4204

TO ESTABLISH AN INTERAGENCY TASK FORCE TO ANALYZE
PREPAREDNESS FOR NATIONAL PANDEMICS, AND FOR OTHER
PURPOSES



OCTOBER 19, 2020.—Ordered to be printed

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FEDERAL EMERGENCY PANDEMIC RESPONSE ACT

OCTOBER 19, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4204]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4204) to establish an Interagency Task Force to analyze preparedness for national pandemics, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 4204, the Federal Emergency Pandemic Response Act, is to help ensure that the Federal Government is more prepared for future pandemics by convening relevant agency heads to examine preparedness, strengthening Federal and State coordination during a pandemic, and providing authorities to share personal protective equipment.

II. BACKGROUND AND NEED FOR THE LEGISLATION

In 1998, Congress enacted the *Omnibus Consolidated and Emergency Supplemental Appropriations Act*, which required the Centers for Disease Control and Prevention (CDC) to acquire a pharmaceutical and vaccine stockpile.¹ This program would become the National Pharmaceutical Stockpile (NPS), intended to “counter potential biological and chemical threats and threats from widespread diseases that could affect large numbers of persons in civilian population.”² On March 1, 2003, the NPS was renamed the Strategic National Stockpile (SNS).³

The SNS serves as “the nation’s supply of life-saving pharmaceuticals and medical supplies, managed by [HHS] for use in a public health emergency.”⁴ SNS pharmaceuticals, medical supplies, medical devices, and other supplies are designed to supplement and re-supply state and local public health agencies in the event of an emergency.⁵

An example of the SNS’s effectiveness and efficiency can be seen in the Federal response to the 2009 H1N1 Pandemic. According to the HHS, “the SNS demonstrated its ability to deploy antiviral drugs and personal protective equipment nationwide for an influenza emergency. The SNS shipped 25 percent of its total supply of influenza antiviral medications to 62 areas in just 7 days.”⁶ The Association of State and Territorial Health Officials stated that, “[d]uring the H1N1 response, antivirals from the SNS were released in the largest quantities ever deployed from the SNS and in an accelerated timeframe.”⁷ In March 2020, the Washington Post reported that the stockpile distributed 85 million N95 respirators in response to the H1N1 pandemic using billions of dollars in additional funding.⁸ The problem was that the funding did not become permanent, and resources following the 2009 pandemic were depleted.

On January 30, 2020, HHS activated the SNS Operations Center to provide ongoing coordination in support of the COVID–19 response.⁹ On January 31, 2020, Alex Azar, Secretary of Human and Human Services, declared a public health emergency for the entire United States to aid the American healthcare community in re-

¹Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105–277, Title II, 112 Stat. 2681, 2681–358 (1998), <https://www.congress.gov/bill/105th-congress/house-bill/4328>.

²*Strategic National Stockpile (SNS)*, Chemical Hazards Emergency Med. Mgmt., <https://chemm.nlm.nih.gov/sns.htm> (last updated Apr. 17, 2020).

³*Id.*

⁴*Strategic National Stockpile Response to COVID–19 Frequently Asked Questions*, Off. of the Assistant Secretary for Preparedness & Response, <https://www.phe.gov/emergency/events/COVID19/SNS/Pages/FAQ.aspx> (last updated Apr. 17, 2020) [hereinafter *SNS FAQs*].

⁵ftp://ftp.cdc.gov/pub/MCMTraining/Course%20Presentations_SNS%20Course_Jun_2017/2%20-%20Introduction%20to%20Strategic%20National%20Stockpile%20Operations%20-%20FINAL2a.pptx

⁶Greg Burel, *The Evolution of the Strategic National Stockpile*, Off. of the Assistant Secretary for Preparedness & Response (Aug. 21, 2019), <https://www.phe.gov/ASPRBlog/Pages/BlogArticlePage.aspx?PostID=356>.

⁷*Strategic National Stockpile*, Ass’n of St. & Territorial Health Officials, <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Use-Authorization-Toolkit/Strategic-National-Stockpile-Fact-Sheet/> (last visited Aug. 4, 2020).

⁸Beth Reinhard & Emma Brown, *Face Masks in National Stockpile Have Not Been Substantially Replenished Since 2009*, Wash. Post (Mar. 10, 2020, 4:57 PM), https://www.washingtonpost.com/investigations/face-masks-in-national-stockpile-have-not-been-substantially-replenished-since-2009/2020/03/10/57e57316-60c9-11ea-8baf-519cedb6ccd9_story.html.

⁹*SNS FAQs*, *supra* note 4.

sponse to COVID–19.¹⁰ In declaring the public health emergency, the announcement cited that, “HHS divisions are also collaborating with industry to identify and move forward with development of potential diagnostics, vaccines, and therapeutics to detect, prevent, and treat [COVID–19] infections.”¹¹ On March 21, 2020, as demand outpaced supply, HHS “awarded contracts to incrementally purchase approximately 600 million N95 respirators over the next 18 months.”¹²

The COVID–19 pandemic placed greater demands on the SNS than ever before. On top of this historic demand, many public health experts warned that the stockpile was still significantly depleted following its distribution to respond to H1N1 in 2009.¹³ On March 5, 2020, the Assistant Secretary for Preparedness and Response (ASPR) at HHS told the U.S. Senate Committee on Health, Education, Labor, and Pensions in a public hearing that the stockpile held 35 million N95s.¹⁴ Senator Mitt Romney pointed out, “[i]t strikes me we should have substantially more.”¹⁵ In fact, public health officials have stated that the actual amount was only one-third that many.¹⁶

In responding to COVID–19, HHS was forced to make prioritization decisions in regards to the allocation of their resources. As HHS stated, “[u]nder the joint direction of [the Federal Emergency Management Agency] and HHS in support of the COVID–19 response, the [SNS] has deployed all remaining personal protective equipment. A small percentage (10 percent) will be retained for critical needs of frontline healthcare workers serving in federal response efforts.”¹⁷

The shortcomings in the SNS’s response to COVID–19 raised questions about the mission of the stockpile. Not only have prior events depleted its stock, but many healthcare experts have observed that the SNS was not given the necessary resources and funding to be a nationwide resource for large-scale pandemic events. Former SNS Director Greg Burel stated, “[t]he SNS was never envisioned to be the first stop in response to pandemics and emerging infectious disease. Instead, its primary purpose was to prepare for potential chemical, biological, radiological, and nuclear events.”¹⁸

Through hearings and oversight efforts, Chairman Johnson noted “a lack of clarity and understanding of exactly what the SNS’s role

¹⁰ Press Release, U.S. Dep’t of Health & Hum. Servs., Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

¹¹ *Id.*

¹² SNS FAQs, *supra* note 4.

¹³ Reinhard & Brown, *supra* note 8.

¹⁴ *An Emerging Disease Threat: How the U.S. Is Responding to COVID–19, the Novel Coronavirus, Hearing Before the S. Comm. on Health, Education, Labor, & Pensions*, 116th Cong. (2020) (statement of Dr. Robert Kadlec, Assistant Secretary for Preparedness and Response), <https://www.help.senate.gov/hearings/an-emerging-disease-threat-how-the-us-is-responding-to-covid-19-the-novel-coronavirus>.

¹⁵ *Id.* (statement of Sen. Mitt Romney).

¹⁶ Reinhard & Brown, *supra* note 8.

¹⁷ SNS FAQs, *supra* note 4.

¹⁸ Greg Burel, *The Rapidly Expanding Mission of the Strategic National Stockpile*, HILL (Apr. 18, 2020, 1:00 PM), <https://thehill.com/opinion/white-house/493459-the-rapid-mission-of-the-strategic-national-stockpile>.

is, and what it should be.”¹⁹ Furthermore, he stated, “[w]e are paying the price for this lack of articulation and clarity during the current pandemic.”²⁰ Senator Rick Scott added, “I agree with you. I think it starts with coming up exactly what our mission is. And if you have the right mission, and you have the right funding, then you probably get a good result.”²¹

The Federal Emergency Pandemic Response Act would convene an interagency task force led by the Office of Management and Budget (OMB), without arriving at any predetermined conclusions, to determine what the mission of the SNS should be, and whether the current name aligns with the determined mission. The task force must also assess the current inventory, inventory practices, and whether or not that inventory meets the level necessary to respond to an event. This legislation also requires the task force to evaluate where the stocks should be held, whether centralized or decentralized, for security purposes and to ensure expediency in its distribution.

This bill also requires the NRCC to share information with states (and requests states to voluntarily share information with the NRCC) about the available inventory of necessary medical supplies during a public health emergency. Finally, the bill authorizes the Department of Homeland Security (DHS) to share excess personal protective equipment (PPE) with HHS on reimbursable basis if the Secretary of DHS determines they have excess equipment beyond what is required to provide to their workforce.

III. LEGISLATIVE HISTORY

Chairman Ron Johnson (R–WI) introduced S. 4204, the Federal Emergency Pandemic Response Act, on July 2, 2020. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator Rick Scott (R–FL) later joined as a cosponsor.

The Committee considered S. 4204 at a business meeting on July 22, 2020. Senator Johnson offered a substitute amendment, as modified, that replaced DHS with OMB to convene the interagency task force to lead the review of the SNS, and added more relevant federal stakeholders to the task force. The amendment was adopted by unanimous consent with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

Ranking Member Gary Peters (D–MI) offered an amendment to strike the section codifying FEMA’s Supply Chain Stabilization Task Force, and instead have the interagency task force identify and assess weaknesses in the supply chain and have the Federal Government develop a plan to address and preserve the supply of, as well as accelerate the production of, PPE in the U.S. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

¹⁹*The Role of the Strategic National Stockpile in Pandemic Response: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2020) (statement of Sen. Ron Johnson, Chairman), <https://www.hsgac.senate.gov/the-role-of-the-strategic-national-stockpile-in-pandemic-response>.

²⁰*Id.*

²¹*Id.* (statement of Sen. Rick Scott).

Senator Maggie Hassan (D–NH) offered an amendment, as modified, that would require the interagency task force to propose best practices on the procurement, distribution, and replenishment of supplies within the SNS, as well as evaluate databases the Federal Government manages that hold information on the inventory and location of the SNS. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

Senator Kamala Harris (D–CA) offered an amendment, as modified, that would add the Director of Minority Health and the Director of Indian Health Services to the interagency task force, and require the task force to participate in a review of identifying communities that lack adequate resources to combat COVID–19, as well as produce routine reports to Congress on this review with recommendations on how to best allocate critical resource to at-risk communities. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

Senator Jacky Rosen (D–NV) offered an amendment that would have the interagency task force provide recommendations on whether or not the SNS should inventory equipment and supplies for small scale and customizable manufacturing capabilities, such as 3D printing. The amendment was adopted by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen present.

The Committee ordered the bill, as amended, reported favorably by voice vote. Senators present for the vote were: Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes that the bill may be cited as the “Federal Emergency Pandemic Response Act.”

Section 2. Interagency Task Force to analyze preparedness for national pandemic

Subsection (a) instructs the Director of OMB, or another agency head selected by the Director of OMB, to convene an interagency Task Force to analyze U.S. pandemic preparedness.

Subsection (b) lays out the officials who are required to participate in the Task Force. Those participants are: the Secretary of Homeland Security; the Director of the Office of Minority Health at HHS; the Director of Indian Health Service at HHS; the Under Secretary for Management of DHS; the Administrator of FEMA at DHS; the Administrator of the Transportation Security Administration at DHS; the Assistant Secretary of the Office of Countering Weapons of Mass Destruction at DHS; the Chief Medical Officer at DHS; the Secretary of HHS; the ASPR at HHS; the Director for CDC; the Secretary of Defense; the Director of OMB; any other head of a Federal agency that the Director of OMB deems necessary; and any other representative from state, local, Tribal, or territorial public health offices or representatives from private and

nonprofit sector healthcare organizations that the Director of OMB deems necessary.

Subsection (c) sets forward the responsibilities of the Task Force. This subsection requires the Task Force to define the mission of the SNS and assess if the title, “Strategic National Stockpile”, is appropriate. The Task Force is also required to assess the current inventory of the stockpile and to determine future stockpile needs. To do so, the Task Force must list all supplies and make a determination of proper inventory levels through communication with other stakeholders, such as State, local, Tribal, territorial governments. Additionally, the Task Force is required under this subsection to make determinations regarding the sourcing of the stockpile, the required funding to satisfy the necessary levels, and location(s) where stocks should be held. The Task Force must develop plans for inventory maintenance, interagency coordination, and perform a supply chain analysis.

This subsection also requires the Task Force to submit to Congress and FEMA reports every other month with information on communities in need of resources, communities with racial and ethnic disparities as it relates to COVID-19, and recommendations on where to allocate resources. Lastly, this subsection requires a comprehensive report be submitted to Congress detailing the Task Force’s recommendations within 1 year of enactment.

Subsection (d) requires the Task Force to consult with experts in addressing racial and ethnic disparities before reporting to Congress.

Section 3. National Response Coordination Center role in improving transparency

Subsection (a) provides that FEMA and the NRCC are to request and share information with state, local, Tribal and territorial governments on the inventory and holdings of critical supplies during a public health emergency.

Subsection (b) requires the NRCC to report annually to Congress on their activities.

Section 4. Other authorities

This section amends the Homeland Security Act of 2002 to authorize the DHS Secretary to transfer excess supplies and equipment in DHS inventory upon receiving a formal request from the HHS Secretary. In addition, this section requires DHS to evaluate the availability of excess supplies and ensure the transfer of supplies will not affect the health of DHS personnel. The Secretaries of HHS and the DHS must inform Congress of any effort to transfer excess material. Lastly, this section provides that the HHS Secretary, in consultation with the DHS Secretary, may sell supplies from the SNS that are approaching their expiration date or deemed dispensable.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s state-

ment that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 2020.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 4204, the Federal Emergency Pandemic Response Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4204, Federal Emergency Pandemic Response Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 22, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 4204 would establish a federal interagency task force to analyze the nation's preparedness for national pandemics. The bill would detail the task force's membership and responsibilities, which would include a review of the mission of the Strategic National Stockpile and an assessment of its current inventory and future needs. In addition, the bill would:

- Direct the National Response Coordination Center (which is operated by the Federal Emergency Management Agency) to request and share information from state, local, and tribal governments regarding their inventories of medical supplies during pandemic and related health emergencies, and

- Permit the Department of Health and Human Services (HHS) to sell medical supplies maintained in the Strategic National Stockpile under certain circumstances.

Because federal agencies are currently coordinating activities similar to those required by S. 4204, CBO expects that implementing any new activities required under the bill would not require substantial resources. Therefore, CBO estimates that implementing the bill would not have a significant cost; any spending would be subject to the availability of appropriated funds.

S. 4204 could affect direct spending by allowing HHS to sell some medical supplies in the Strategic National Stockpile to state, local, and tribal governments. CBO expects that those sales would be small and infrequent and would thus have no significant effect on direct spending over the 2021–2030 period.

The CBO staff contacts for this estimate are Matthew Pickford, Jon Sperl, and Lisa Ramirez-Branum. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would not make changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.