

# THE TRUTH ABOUT MASKS: GOVERNMENT SEIZURES, SHORT SUPPLY, AND PORTABLE SANITATION

There's an old saying, "Rumors fly; the truth walks." As if we don't all have enough to worry about right now, there is buzz floating around about face mask shortages that makes your hard job even more challenging.

## Is FEMA or "The Government" Seizing Masks and Other Supplies?



The short answer is: yes, in very limited instances. More of the time, supplies are being diverted to areas where they are desperately needed.

The government only "seizes" things that are entering the country illegally or that violate import rules. If faulty, improperly labeled, or otherwise substandard masks or other PPE materials arrive at our ports, the government can seize them. This has occurred in a few fairly limited cases including one on [April 23rd](#).

Since March, a system overseen by government entities have more commonly been diverting shipments headed to purchasers. Some government agencies deny that this is happening, but there have been many cases reported in the press. For example:

- ["Delaware Medical Supplier Says FEMA Seized 400,000 N95 Masks; Now He's out Millions of Dollars"](#) as reported in *USA Today*, April 21, 2020.
- ["The Federal Government is Reportedly Quietly Seizing Medical Supplies from Hospitals across the Country"](#) as reported in *Business Insider*, April 9, 2020.

The subject has also come up during bi-weekly phone calls between FEMA's National Business Emergency Operations Center (NBEOC) and business and infrastructure leaders, including the PSAI. So yes, something is definitely happening to inbound mask shipments in more than a few cases.

## Seizing Shipments versus Diverting Shipments

If you are on the wrong end of this situation, you might think there is very little difference between seizing and diverting shipments. Either way, you don't get your stuff.

There is, however, a big difference. When something is seized, a law has been broken and—probably—someone is in trouble. When something is diverted, the government is using its authority to match needs with supplies, and no one is in trouble.



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For example, a few weeks ago, shipments containing PPE were diverted by government authorities and re-allocated to medical personnel in COVID-19 hot spots around the country. The original customer expecting those shipments is currently out both the money and the product. Theoretically at least they will get one or the other eventually, but it could take a while.

### Yes, They Can Do That



The diversion process is legal under several laws, the most well-known of which is the [Defense Production Act \(DPA\)](#). The Administration only recently began invoking the DPA to generate and move supplies to where they are most needed, although it is not clear that DPA applies to legal inbound shipments from non-American producers.

This process has led to massive confusion and finger-pointing for the past few weeks. Now that domestic production is ramping up and there is more clarity on how things are supposed to work, the situation appears to be stabilizing.

### Are Shipments Still Being Diverted?

The system for prioritizing and diverting equipment has mostly been straightened out and communicated now. As a result, state and local officials know how it works and the flow of supplies—still far fewer than needed—is working better. Hence, there is less “real” news around diversion in the past two weeks or so.

What is more likely to be affecting the portable sanitation industry at the present time are some “bad actors” and “posers” who are up to no good. There are still confirmed incidences of hoarding, price gouging, and other techniques to gain control over supplies or convince desperate purchasers to take a chance on shady deals. If this happens to you, report it to your relevant state agency (usually the Attorney General).

### How Can I Get PPE for My Team?

It is nearly impossible to legally buy and receive shipment of N95 medical grade masks at this time. Even though standards have been relaxed somewhat for medical masks, N95s are in critically short supply in the healthcare sector, and they are highly likely to be diverted to those places even if you find someone who claims they can sell them to you. Reputable online vendors are either taking down their listings or posting notices such as, “Due to the needs of hospitals and first responders, personal protective equipment is not available.”





Be wary of anyone who says they can get you genuine N95 masks. We are hearing about companies offering to import and sell N95 masks to domestic companies. In most cases, the masks will be diverted at the port of entry, or they will not actually be authentic N95s. A worst case scenario would be if the importer uses “creative” labeling to skirt the port authorities so they can sell to you. This is illegal and could spell trouble if discovered and your company is associated with the scheme.

Some portable sanitation companies have found KN95 mask suppliers. KN95s are a close substitute for N95s. These, too, are sometimes being diverted for medical use when nothing better can be found, and the lead time on purchase is still several weeks out as of this writing. To learn more about different high quality masks, read 3M’s January 2020 Technical Bulletin, “[Comparison of FFP2, KN95, and N95 and Other Filtering Facepiece Respirator Classes.](#)”

Face mask substitutes such as face shields that can be worn over a dust mask or cloth mask are gradually becoming more available. These are not as good as N95 masks, but in the portable sanitation industry these options are likely to be effective for the exposure experienced by most service technicians on job sites. If you are required to provide N95 masks for entering particular job sites, your best bet is to work with your customer to obtain the masks through his or her supplier. If your customer requires these masks, s/he probably has a resource for obtaining them. If not, they will probably have to relax the requirement and allow a reasonable substitute.

### Bottom Line

It is going to be a while before the supply and demand for masks comes back into balance, particularly if there is a second wave of COVID-19 in the fall of 2020 (or a COVID-19 wave co-occurring with next year’s regular flu cases). Resist the urge to hoard but take steps to order product and keep ordering it on a regular basis.

The goal should be to maintain an inventory only large enough to see you through bottlenecks in the supply chain that could still occur. Allow for longer lead times and higher prices. If you are not already attending the PSAI’s weekly virtual roundtables for Members, do that regularly. This is a place where you can learn how others are solving these supply challenges.