

Applying the Defense Production Act

Release Date: January 26, 2021

Released date: April 13, 2020

WASHINGTON - The scarcity of medical resources in the fight against COVID-19 is a global issue. The United States is competing for the same resources as many other countries. To maximize the availability of critical protective and lifesaving resources to front line health care workers, FEMA and the Department of Health and Human Services (HHS) are [executing a four-pronged approach](#) to rapidly increase supply today and expand domestic production of medical supplies and equipment to increase supply long-term. The approach includes *Preservation*, *Acceleration*, *Expansion* and *Allocation*.

The Defense Production Act (DPA) provides authorities that are being applied to support *Acceleration* and *Expansion* efforts. Priority rated DPA orders do not create a situation of “outbidding;” rather, it puts the federal government requirement to the “front of the line” for fulfillment ahead of other orders.

As we process orders through the supply chain, we are maintaining close coordination with governors to identify potential bidding conflicts. We look to the Nation’s governors and tribal leaders to make us aware of specific information regarding apparent bidding conflict. If a bidding conflict does arise, we work closely with the state or tribe to resolve it in a way that best serves their needs.

How Defense Production Act Authorities Help in the Fight Against COVID-19

To address the shortage of critical medical supplies in the fight against COVID-19, the White House COVID-19 Task Force is using authorities made available in the DPA. The DPA gives the President the authority to work with the private sector to prioritize federal government contracts and to allocate materials to aid the national defense which includes emergency response and preparedness activities.

In recent Presidential Executive Orders and supplemental statements, the Secretaries of Health and Human Services and Homeland Security were directed to use DPA authorities to require a number of companies to accept, perform and



prioritize federal contracts for ventilators and personal protective equipment. This authority gives HHS and FEMA the ability to prioritize contracts, allocate limited supplies, increase production of critical supplies and enter into voluntary agreements with industry partners.

These Departments can use DPA authorities to require private sector vendors to prioritize fulfillment and delivery of federal orders of critical items during an emergency, even if they have to delay or cancel contracts with other customers. They can also issue DPA allocation orders to ensure that the production and distribution of vital resources is done in compliance with U.S. Government policies. There are three types of allocation orders that can be used for COVID-19 response:

- A *Set-aside* requires a company to reserve resources in anticipation of receiving a priority-rated order.
- A *Directive* requires a company to take, or refrain from taking, certain actions to maintain the production of an item.
- An *Allotment* requires a company to specify the maximum quantity of materials, services or facilities authorized for a specific use.

The DPA also authorizes several types of financial incentives that can be used to help the COVID-19 response:

- Government can encourage increased production through purchase commitments and producers can sell inventory to any buyer.
- Government can allow private businesses to use government-owned equipment.
- Government can provide guaranteed loans, which require additional Congressional legislation.

Using DPA authorities, private industry and other stakeholders can enter into an agreement with the federal government and with each other that might otherwise be subject to antitrust laws. These agreements to coordinate and support COVID-19 response actions allow companies to expand production of PPE and coordinate treatment and quarantine during the COVID pandemic.

Examples of Use DPA Authorities in the COVID-19 Response



By rating contracts under the DPA, HHS is helping manufacturers like General Motors (GM) get the supplies they need to produce ventilators as quickly as possible, while also ensuring that these ventilators are routed through the Strategic National Stockpile to where they're needed most.

- On **April 13**, HHS [announced five new contracts](#) for ventilator production rated under DPA to General Electric, Hill-Rom, Medtronic, ResMed, and Vyaire.
- HHS [issued a contract to Philips](#) for the delivery of 2,500 ventilators to the Strategic National Stockpile by the end of May 2020 and a total of 43,000 ventilators to be delivered by the end of December 2020.
- HHS [issued a contract to GM](#) for 30,000 ventilators to be delivered to the Strategic National Stockpile by the end of August, with a production schedule allowing for the delivery of 6,132 ventilators by June 1.
- The seven new ventilator contracts rated under the DPA announced by HHS this month will provide a total of 137,431 ventilators by the end of 2020.
- FEMA issued a DPA enabled production order to 3M for 10 million N95 respirators. The first shipment of this order arrived yesterday, April 12, and included approximately 600,000 masks. We intend to use this new source of N95s to both fill state requests of FEMA for support and to reinforce normal supply chain fills.

On Friday, April 3, President Trump issued "[Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use](#)" directing the Department of Homeland Security (DHS), FEMA, in consultation with HHS, to use the DPA to keep scarce medical resources within the United States for domestic use. Personal Protective Equipment (PPE) subject to this policy includes: N95 respirators, and a variety of other filtering respirators; air-purifying respirators; surgical masks; and, surgical gloves.

[FEMA and Customs Border Protection \(CBP\) are working together](#) to prevent domestic brokers, distributors, and other intermediaries from diverting these critical medical resources overseas. To accomplish this, CBP will detain shipments of the PPE specified in the President's Memorandum while FEMA determines whether to return the PPE for use within the United States, purchase the PPE on behalf of the United States, or allow it to be exported.

Clarification that Project Airbridge is Not Under DPA



In a separate line of effort to help get critical medical resources in the domestic supply chain, FEMA connected with private sector companies and is helping to get shipments from overseas manufacturers. [FEMA established an airbridge](#) to reduce the time it takes for U.S. medical supply distributors to receive their PPE and other critical supplies into the country for their respective customers. This airbridge is not executed under DPA authorities.

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