# Voluntary Agreement With Private Industry To Respond To Pandemics

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Because COVID-19 has presented a direct threat to the national defense and its preparedness programs, FEMA has established a voluntary agreement under the Defense Production Act (DPA) for enhanced coordination and cooperation with private sector manufacturers, distributors and industry representatives to provide critical healthcare resources to respond to a pandemic.

The goal is to be able share pertinent information that will help the federal government to work alongside industry, to provide the needed PPE and medical resources as quickly as possible during a public health emergency, including COVID-19, over the next five years.

## Benefits of the Agreement

The voluntary agreement allows the federal government and the private sector to share more information than is typically allowed under antitrust laws. This includes information about supply chains and challenges, manufacturer capacity, and pricing considerations. These communications allow both the government and the private sector to troubleshoot issues, and coordinate for efficient use of resources and delivery of supplies.

The agreement may also potentially be used to ensure the U.S. is not excessively reliant upon the foreign production of medical supplies which can be vulnerable to supply chain disruptions.

## Companies and organizations from the private sector that have signed on to the Agreement

FEMA is building out private sector participation in the agreement. Currently, a wide range of distributors, manufacturers, industry associations, and others with relevant expertise have agreed to participate in the voluntary agreement.

## Future Participants

Private sector organizations with significant national capability and capacity may sign on to this voluntary agreement, upon the invitation of FEMA, at any time during the lifetime of the plan or agreement, which is five years.

Companies and organizations who wish to participate in this agreement may contact OB3I@fema.dhs.gov.

## How the Agreement will be Implemented

The agreement will be implemented through a series of plans of action, each of which focuses on a single aspect of the COVID-19 response. FEMA has implemented one plan of action to date, on improving the manufacture, allocation, and distribution of certain types of PPE. This plan of action is in turn implemented through a number of subcommittees, each of which focuses on one type of PPE.

## Agreement Process

As required by the DPA, FEMA sought and received determination from the U.S. Attorney General, in consultation with the Federal Trade Commission, that the agreement was necessary and appropriately limited in its anti-competitive impact.

Discussions and meetings will take place regularly over the coming months. Public meetings will be held quarterly.

## Defense Production Act Authorities

The President first utilized the DPA in response to COVID-19 in Executive Order 13909 on March 18. On March 27, Executive Order 13911 was signed, delegating DPA authorities for health and medical resources for COVID-19 response to the Secretary of Homeland Security, who in turn delegated this authority to the FEMA Administrator.

**Title I** of the Act allows the government to “priority rate” contracts and orders needed for the national defense, which requires that suppliers move rated orders to the “front of the line.” FEMA, HHS and other federal partners, have placed priority rated orders for health and medical resources to respond to COVID-19, including PPE and ventilators. Allocation of resources is also allowed under Title I.

**Title III** of the DPA allows the federal government to make loans, loan guarantees, and to take other actions to facilitate increased or protect services and materials essential to the national defense. Implementation of Title III is managed by the Department of Defense as they hold the only active Title III program.

**Title VII** of the DPA allows the federal government to establish a voluntary agreement with private sector manufacturers, distributors, and industry representatives to provide resources that can aid the U.S.in its national defense or for preparedness in a national emergency.

**End Date of the Agreement**

Under DPA, Sec. 708(f)(2), agreements (and plans of action) expire after 5 years. This agreement will expire in August of 2025 as it was established on Aug. 17, 2020

After five years, if the same needs arise, or are ongoing, the agreement may be renewed. Renewal of a voluntary agreement requires approval by the Attorney General, in consultation with the Federal Trade Commission.

Rolling admission of private sector stakeholders is permitted at any time during the 5-year period.  However, private sector partners may choose to leave the voluntary agreement at any point in time, but they must provide FEMA with written notice 15 days in advance of departure. However, they will no longer have the protections afforded under the agreement for any future actions.

**To Read the Agreement**

Visit the Federal Register where the agreement was published on August 17.