

The Defense Production Act (DPA) and the COVID-19 Pandemic: Recent Developments and Policy Considerations

April 15, 2020

In response to the COVID-19 pandemic, the Administration invoked the [Defense Production Act of 1950](#) (DPA) on multiple occasions to facilitate the manufacture and distribution of medical equipment and supplies. The full extent of DPA implementation is unclear—to date, there have been six public announcements describing official DPA implementation actions.

This Insight describes recent DPA actions and reported implementation with regard to the COVID-19 pandemic, and discusses policy considerations for Congress. It is intended as a companion to CRS Insights [IN11280](#) and [IN11231](#). See CRS Report [R43767](#) for a more in-depth discussion of DPA history and authorities.

For additional related resources, see the CRS Coronavirus Disease 2019 homepage.

Recent DPA Actions

As of April 15, the Administration has issued three DPA-related executive orders and four memoranda (in chronological order):

- E.O. [13909](#), *Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19* (March 18), delegated authority to the Health and Human Services (HHS) Secretary for making use of DPA Title I prioritization and allocation authorities to respond to the pandemic;
- E.O. [13910](#), *Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19* (March 23), delegated authority to the HHS Secretary, in coordination with FEMA, to effect anti-hoarding actions using DPA Title I and data collection under Title VII authorities; and
- E.O. [13911](#), *Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19* (March 27), delegated authority to the HHS and the Homeland Security (DHS) secretaries,

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allowing each to make use of DPA Title III for issuing financial incentives to expand productive capacity, and coordinate industry under the Title VII voluntary agreements provision.

Four COVID-19-related memoranda direct the implementation of DPA authorities (in chronological order):

- *Memorandum on Order Under the Defense Production Act Regarding General Motors Company* ([March 27](#)) directs HHS to use DPA Title I authorities to compel General Motors (GM) to produce ventilators.
- *Memorandum on Order Under the Defense Production Act Regarding the Purchase of Ventilators* ([April 2](#)) directs HHS, in consultation with DHS, to make use of all DPA authorities to effect ventilator production by “the appropriate affiliate or subsidiary” of: General Electric Company; Hill-Rom Holdings, Inc.; Medtronic Public Limited Company; ResMed Inc.; Royal Philips N.V.; and Vyaire Medical, Inc.
- *Memorandum on Order Under the Defense Production Act Regarding 3M Company* ([April 2](#)) directs the DHS secretary, through FEMA, to employ DPA authorities to acquire N95 respirators from any 3M “subsidiary or affiliate.”
- *Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use* ([April 3](#)) provides for the DHS secretary, through FEMA and in consultation with HHS, to “allocate for domestic use” (under DPA Title I) health and medical resources.

Implementation of DPA Authorities

As of April 15, the Administration has publicized four DPA-related production actions:

1. A \$489.4 million HHS [contract](#) (April 8) with GM for 6,132 ventilators to be delivered to the Strategic National Stockpile by June 1, and 30,000 ventilators by August. HHS noted it was the first DPA-rated contract issued in response to the COVID-19 emergency (i.e., using Title I priority-rated orders through the [Health Priorities and Allocations System](#)).
2. A [\\$646.7 million HHS contract](#) (April 8) with Philips for 2,500 ventilators to be delivered to the Strategic National Stockpile by the end of May, and 43,000 ventilators by December. HHS announced it as the second Title I prioritization action.
3. The Department of Defense (DOD) [announced plans](#) to use [Title III authorities](#) (April 11) through a \$133 million investment dedicated to increasing domestic production capacity for N95 masks.
4. Contracts [totaling \\$533.2 million](#) (April 13) with General Electric, Hill-Rom, Medtronic, ResMed, and Vyaire for 31,416 ventilators using DPA Title I authorities. Two other non-DPA contracts were simultaneously announced.

In addition, the Administration publicized two non-production related DPA actions:

5. The Department of Justice announced [an arrest](#) (March 30) and the [seizure and redistribution](#) of hoarded medical supplies (April 2), pursuant to the HHS [Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures](#), issued per E.O. 13910; and
6. FEMA, as DHS’s [delegate](#) for DPA authorities, in coordination with Customs and Border Protection, [released guidance](#) (April 10) on the use of DPA to allocate specified scarce

medical supplies—per the President’s April 3 [memorandum](#)—exclusively [for domestic use](#) and “may not be exported” without FEMA’s authorization.

Policy Considerations

DPA authorities have not been exercised in response to major national crises in the modern era. Generally, they were employed tactically by a single agency (usually DOD) in response to discrete requirements or projects. Similarly, the Administration implementation pattern and [stated position to date](#) frames the DPA primarily as an instrument to compel voluntary action from industry, rather than as a strategic platform for industry coordination.

While recent DPA actions could suggest a broader approach, coordination responsibility for DPA implementation is not publicly established, and appears fragmented among at least four federal agencies:

- HHS and FEMA each have DPA leadership responsibilities under various presidential directives;
- Trade Advisor Peter Navarro, a member of the White House Coronavirus Task Force, [was named](#) DPA coordinator; and
- DOD, given its long-standing DPA experience (usually in military, non-emergency contexts), is also a [locus](#) of DPA authority.

Although FEMA is the statutory lead agency for national emergency response, this does not necessarily extend to DPA. No single agency or interagency body appears to maintain a dedicated staff and authority to coordinate government-wide DPA implementation in emergencies. Public reporting and congressional oversight of DPA activities is fragmented and irregular.

In response, Congress may wish to consider the following policy alternatives:

- Emphasize the DPA as a means of orchestrating broad industry mobilization through public signaling, industry outreach, and/or legislation;
- Assign government-wide authority for DPA coordination and implementation in emergency situations to a single permanently staffed office with interagency support, such as within FEMA or through an expansion of the [DPA Committee](#); and
- Provide any eventual DPA office with the relevant resources to respond to the current and future crises, and the authority to incorporate DPA into federal contingency planning and to collect information and perform timely reporting (annual and regularized interim reporting) on DPA authorities used during and outside of crisis situations.

Author Information

Michael H. Cecire
Analyst in Intergovernmental Relations and Economic
Development Policy

Heidi M. Peters
Analyst in U.S. Defense Acquisition Policy

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