



Billing Code: 9111-19-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2020-0016]

Meeting to Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Announcement of meeting; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will convene a meeting remotely via web conference to implement the Voluntary Agreement for the *Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic*. A portion of the meeting will be open to the public.

DATES: The meeting will take place on Tuesday, October 13, 2020, from 1:00 to 3:30 p.m. Eastern Time (ET). The first portion of the meeting, from approximately 1:00 to 2:00 p.m., will be open to the public. Written comments for consideration at the meeting must be submitted and received by 12:00 p.m. ET on Monday, October 12, 2020. To register to attend the meeting or to make remarks during the public comment period of the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below by 12:00 p.m. ET on Monday, October 12, 2020.

ADDRESSES: The meeting will be held via web conference. To register for the meeting, and to obtain information about how to attend the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 12:00

p.m. ET on Monday, October 12, 2020, and provide your name, telephone number, email address, title, and organization.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered at the meeting. The Meeting Objectives listed below outline these issues. Written comments for consideration at the meeting must be submitted and received by 12:00 p.m. ET on Monday, October 12, 2020, identified by Docket ID FEMA-2020-0016, and submitted by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FEMA's Office of Business, Industry, Infrastructure Integration, OB3I@fema.dhs.gov.

Instructions: All submissions must include the docket ID FEMA-2020-0016. Comments received, including any personal information provided, may be posted without alteration at <https://www.regulations.gov>.

Docket: For access to the docket and to read comments received by FEMA, go to <https://www.regulations.gov>, and search for Docket ID FEMA-2020-0016.

All speakers during the public comment period must limit their comments to three (3) minutes. Comments should be addressed to FEMA. Any comments not related to the

Meeting Objectives, listed below, will not be considered at the meeting. To register to make remarks during the public comment period, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below by 12:00 p.m. ET on Monday, October 12, 2020. If necessary, FEMA will limit the number of comments taken during the public meeting consistent with the time available, but will consider relevant and properly submitted written submissions from all interested parties.

FEMA encourages interested parties to make written submissions in advance of or following the meeting consistent with the instructions for submitting comments stated above. Follow-up comments must be received within five (5) business days of the meeting in order to be considered.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212-1666.

SUPPLEMENTARY INFORMATION: Notice of the meeting is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of “voluntary agreements and plans of action” with, among others, representatives of industry and business to address conditions that may pose a direct threat to the national defense or its preparedness programs.¹ The President’s authority to facilitate voluntary agreements has been delegated to the Department of Homeland Security (DHS) generally in section 401 of Executive Order

¹ 50 U.S.C. 4558(c)(1).

13603,² “National Defense Resources Preparedness,” and specifically for response to the spread of COVID-19 within the United States in section 3 of Executive Order 13911,³ “Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources To Respond to the Spread of COVID-19.” The Secretary of Homeland Security has delegated this authority to the FEMA Administrator in section II of DHS Delegation 09052, Rev. 00.1, “Delegation of Defense Production Act Authority to the Administrator of the Federal Emergency Management Agency” (Apr. 1, 2020).

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the *Federal Register* a “Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic” (Voluntary Agreement).⁴ Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID-19, during that time.

The meeting will be chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and the Chairman of the Federal Trade

² 77 FR 16651 (Mar. 22, 2012).

³ 85 FR 18403 (Apr. 1, 2020).

⁴ 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the *Federal Register* on the same day. 85 FR 50049 (Aug. 17, 2020).

Commission or his delegate. In implementing this agreement, FEMA will adhere to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The purpose of the meeting is four-fold:

- (1) Update interested parties on the status of the implementation of FEMA's Voluntary Agreement;
- (2) Request that interested parties sign up to participate in the Voluntary Agreement;
- (3) Request that specific parties sign up to participate in one or more specific Plans of Action; and
- (4) Discuss activation of the first Plan of Action under the Voluntary Agreement to identify more efficient methods of allocating and distributing Personal Protective Equipment to meet national demand and ways of expanding the production of critical healthcare resources, with an initial focus on the manufacture of N95 masks.

Portions of the Meeting Closed to the Public: By default, the DPA requires meetings held to implement a Voluntary Agreement or Plan of Action be open to the public.⁵ However, attendance may be limited if the Sponsor⁶ of the Voluntary Agreement, in this case the FEMA Administrator, finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c). The FEMA Administrator has found that the portion of the meeting dedicated to achieving meeting objective 4, finalizing the first Plan of Action under the Voluntary Agreement, falls

⁵ See 50 U.S.C. 4558(h)(7).

⁶ “[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.” 50 U.S.C. 4558(h)(7).

within the purview of matters described in 5 U.S.C. 552b(c) and should therefore be closed to the public.

Specifically, finalizing the Plan of Action may require Plan of Action Participants from the private sector to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for a meeting to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary Agreement depends on willing and enthusiastic participation of the private sector. If sensitive information that was shared during Plan of Action development were released, some or all of the Participants would likely withdraw their support from the Voluntary Agreement, which would significantly frustrate the implementation of the Voluntary Agreement and proposed Plan of Action. Frustration of an agency's objective due to premature disclosure of information allows for the closure of a meeting to pursuant to 5 U.S.C. 552b(c)(9)(B).

Pete Gaynor,
Administrator,
Federal Emergency Management Agency.

[FR Doc. 2020-22419 Filed: 10/7/2020 8:45 am; Publication Date: 10/8/2020]