



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.

SUMMARY: The Federal Emergency Management Agency (FEMA) held a series of meetings remotely via web conference to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES: The first meeting took place on Monday, December 14, 2020, from 2 to 4 p.m. Eastern Time (ET). The second meeting took place on Wednesday, December 16, 2020, from 2 to 4 p.m. ET. The third meeting took place on Friday, December 18, 2020, from 11 a.m. to 1 p.m. ET.

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 these meetings 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 help provide for the

national defense.¹ The President’s authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread of COVID-19 within the United States in Executive Order 13911.² The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.³

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.

On December 7, 2020, the first plan of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID-19 (Plan of Action) – was finalized.⁵ The Plan of Action established the Personal Protective Equipment Sub-Committee to Define COVID-19 PPE Requirements (Sub-Committee).

The meetings covered by this notice were held by the Sub-Committee to implement the Voluntary Agreement. The meetings were chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and

¹ 50 U.S.C. 4558(c)(1).

² 85 FR 18403 (Apr. 1, 2020).

³ DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

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).

⁵ See 85 FR 78869 (Dec. 7, 2020). See also 85 FR 79020 (Dec. 8, 2020).

the Chairman of the Federal Trade Commission or his delegate. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings were to:

- (1) Establish priorities for COVID-19 PPE under the Voluntary Agreement;
- (2) Identify the first tasks that should be completed under the Plan of Action;
- (3) Identify information gaps and areas that merit sharing (from both FEMA to private sector and vice versa); and
- (4) Identify additional Participants that should be a part of the Voluntary Agreement and Plan of Action.

Meetings 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.⁶ However, attendance may be limited if the Sponsor⁷ of the voluntary agreement 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 Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involved matters which fell within the purview of matters described in 5 U.S.C. 552b(c) and were therefore closed to the public.⁸

Specifically, the meetings to implement the Voluntary Agreement could have required participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary

⁶ See 50 U.S.C. 4558(h)(7).

⁷ “[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).

⁸ Under 50 U.S.C. 4558(h)(8), the Sponsor generally must publish in the Federal Register prior notice of any meeting held to carry out a voluntary agreement or plan of action. However, when the Sponsor finds that the matters to be discussed at such meeting fall within the purview of matters described in 5 U.S.C. 552b(c), notice of the meeting may instead be published in the Federal Register within ten days of the date of the meeting. See 50 U.S.C. 4558(h)(8).

Agreement depends wholly on the willing and enthusiastic participation of private sector participants. Failure to close these meetings could have had a strong chilling effect on participation by the private sector and caused a substantial risk that sensitive information would be prematurely released to the public, resulting in participants withdrawing their support from the Voluntary Agreement and thus significantly frustrating the implementation of the Voluntary Agreement. 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.

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