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March 25, 2020

The Honorable Peter T. Gaynor
Administrator
Federal Emergency Management Agency
500 C Street S.W.
Washington, DC 20472

Dear Administrator Gaynor,

I write to better understand what steps, if any, the Federal Emergency Management Agency (FEMA) is taking under authority of the Defense Production Act (DPA). Statements that you, President Trump, and your spokesperson have made over the last twenty-fours have caused great confusion over the badly needed invocation of this law that can ensure that the production and procurement of materials most in need to fight the coronavirus — such as ventilators, test kits, and respirators or other Personal Protective Equipment (PPE).

On March 18, 2020, President Trump signed the "Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19," thereby invoking components of Title I of the DPA.[1] But early in the morning of March 24, 2020, President Trump tweeted: "The Defense Production Act is in full force, but haven't had to use it because no one has said NO! Millions of masks coming as back up to States." Minutes later, however, you were quoted as saying that the Administration would imminently "use the allocation portion of the DPA" for 60,000 test kits and would "insert some [DPA] language into these mask contracts we have of 500 million masks."[2] Then, late yesterday, your spokesperson stated that "at the last minute" FEMA had been "able to procure the test kits from the private market without evoking [sic] the DPA."[3]

[1] https://www.whitehouse.gov/presidential-actions/executive-order-prioritizing-allocating-health-medical-resources-respond-spread-covid-19/.
[2] Kristen Holmes and Kaitlan Collins, *Trump and FEMA chief contradict each other on Defense Production Act*, CNN (Mar. 24, 2020), https://www.cnn.com/2020/03/24/politics/defense-production-act-trump-gaynor-fema/index.html.
[3] Jeanne Whalen *et al.*, *Scramble for medical equipment descends into chaos as U.S. states and hospitals compete for rare supplies*, Wash. Post (Mar. 24, 2020), https://www.washingtonpost.com/business/2020/03/24/scramble-medical-equipment-descends-into-chaos-us-states-hospitals-compete-rare-supplies/.

It is entirely unclear whether, and if so, how, FEMA and this Administration are intending to use the DPA, even as the chorus of pleas for its invocation from around the country grow louder with each passing day. As the *Washington Post* reported this morning: "The market for medical supplies has descended into chaos, according to state officials and health-care leaders. They are begging the federal government to use a wartime law to bring order and ensure the United States has the gear it needs to battle the coronavirus."[4]

Therefore, please respond to the following questions as soon as possible, and no later than March 27, 2020:

1. How do you explain the contradictions yesterday between President Trump's tweet, your statement, and the statement of your spokesperson? Why did your spokesperson walk back your announcement of FEMA's invocation of the DPA? Was the White House responsible for FEMA's about-face?
2. What did you mean when you said that FEMA would "use the allocation portion of the DPA" beginning yesterday?
3. What is the source of the 60,000 test kits to which you referred? Do these 60,000 test kits include all reagents, swabs, and other supplies needed to properly conduct COVID-19 tests?
4. What mask contracts for "500 million masks" were you referencing, and what DPA "language" were you "insert[ing]" in those contracts?
5. Is FEMA still purchasing 500 million masks? If so, under what contracts? If no, why not?
    a. How many, if any, of those masks are N95 respirators, which the Centers for Disease Control and Prevention (CDC) describes as "the PPE most often used to control exposures to infections transmitted via the airborne route"?[5]
6. If FEMA is still purchasing the 500 million masks, when will they be allocated and distributed, to whom, and on what basis?
7. If FEMA is still obtaining the 60,000 test kits, when will they be allocated and distributed, to whom, and on what basis?
8. If FEMA is still purchasing and obtaining the masks and test kits, what transport and supply services will FEMA use to distribute them?
9. What is the cost of procurement for the masks and test kits, respectively?
10. Is FEMA planning to use DPA Title I authorities for any other medical supplies in response to the COVID-19 crisis, including face shields, gowns, gloves, and ventilators?
    a. If yes, on what scale and what time frame?
    b. If no, why not?
11. Is FEMA planning to use DPA Title III authorities to encourage private sector investment in additional production capacity?
    a. If yes, for what materials, supplies, and equipment, and on what time frame?

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[4] *Id.*

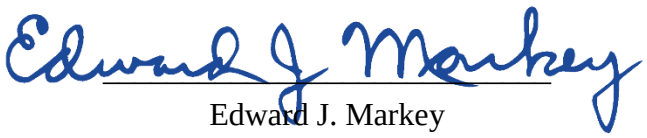
[5] https://www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy/index.html.

b. If no, why not?

As we work to ensure that our hospitals and frontline health care practitioners can keep themselves and the public safe through this crisis, we must fully and comprehensively use DPA authorities to direct and ramp up the production and distribution of key supplies and equipment. FEMA's and the Administration's contradictory statements and dithering about using the DPA are dangerously unacceptable and place the health and safety of millions of Americans at risk.

Thank you in advance for your attention to this letter. If you have any questions, please contact Hannah Vogel of my staff at Hannah_Vogel@markey.senate.gov.

Sincerely,



Edward J. Markey
United States Senator