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The Law Trump Can Use to Order More Ventilators: QuickTake

By Sarah Babbage | March 27, 2020 4:29PM ET

President Donald Trump has a law at his disposal that can speed up production of items needed by hospitals during the coronavirus pandemic. After dusting off the Defense Production Act, he expressed reluctance to use it before doing so.

1. What is the Defense Production Act?

It's a U.S. law enacted under President Harry Truman in 1950 to help the U.S. with the Korean War. Inspired by similar laws passed during World War II, the DPA [granted broad authority](#) to the executive branch to intervene in private industry by demanding that manufacturers give priority to defense production. In addition to national defense, it can be used for products related to critical infrastructure, homeland security, stockpiling, and space. Truman [used the DPA](#) to cap wages and impose price controls on the steel industry. Other powers granted to him by the law -- to requisition materials, ration consumer goods and control consumer credit -- were allowed to lapse in 1953.

2. Has it been used since then?

Yes. The Department of Defense "routinely" uses the law to make sure military-related orders [are given priority](#) within the U.S. supply chain, according to the Congressional Research Service. The Federal Emergency Management Agency has used it after natural disasters to prioritize contracts for manufactured housing, food and bottled water, and other supplies. Two decades ago, President Bill Clinton [was criticized](#) for using the law to order suppliers to sell natural gas to California -- at prices some senators said were far below market -- to help energy utilities facing credit crunches. Trump himself has employed elements of the law to boost [production of rare earth elements](#), [small drones](#) and [sensors](#) to detect submarines, among other products. His administration has also considered using it to help the coal and nuclear industries.

3. What can the government do under the law?

In addition to requiring that its orders be given priority, the government can create incentives for manufacturers, such as providing them with direct loans or loan guarantees; buy equipment for them; and waive antitrust restrictions that could discourage industry cooperation. The law allows the government [to control the use](#) of scarce resources, such as by requiring companies to reserve materials to fulfill federal

orders. Hoarding and price gouging are barred for materials the president designates as scarce. Failing to comply with the law can lead to financial penalties or imprisonment.

4. Is the law being used to help fight the coronavirus?

Trump [is using his power](#) under the law to order General Motors Co. “to accept, perform and prioritize contracts or orders for the number of ventilators” deemed appropriate by the Department of Health and Human Services. That department had earlier taken smaller steps under the law, banning hoarding and price-gouging of N95 respirator masks, [ventilators](#) and [personal protective equipment](#) used by doctors and nurses.

5. Why had Trump been reluctant to use the law?

On March 18, he formally invoked the law with an [executive order](#) “prioritizing and allocating health and medical resources to respond to the spread of Covid-19.” But four days later, on March 22, Trump said action under the law wasn’t needed because “tremendous numbers of companies,” including 3M Co. and General Electric Co., had stepped forward voluntarily to make needed equipment. He also suggested that using the law means “nationalizing our business” as a socialist country like Venezuela might do. (In fact, the law [doesn’t mean](#) the government taking ownership of any companies, which is what nationalization implies.) The U.S. Chamber of Commerce [supported](#) Trump’s resistance to fully deploy his powers under the DPA.



Donald J. Trump

[@realDonaldTrump](#)

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.

Sent via Twitter for iPhone.

View original [tweet](#).

6. Are companies really ramping up production on their own?

Yes, though shortfalls remain. 3M is using “[surge capacity](#)” to ramp up production of N95 masks. Distilleries and breweries are making hand sanitizer. Still, experts say the law could be useful in coordinating production and distribution of complex goods, such as ventilators, which are assembled from hundreds of individual parts.

The Reference Shelf

- Congressional Research Service reports on [the law](#) and [using it for Covid-19](#).

- The U.S. Chamber of Commerce [lobbied the White House](#) to refrain from using the law.
- From the American Presidency Project, [how President Truman described](#) the Defense Production Act in 1950.
- A doctor on the front lines [explained the need for ventilators](#) in a New York Times op-ed.
- Using the law to fight Covid-19 is simple common sense, Joe Nocera [writes](#) in Bloomberg Opinion.

To contact the reporter on this story:

Sarah Babbage in Washington at sbabbage2@bloomberg.net

To contact the editors responsible for this story:

Heather Rothman at hrothman8@bloomberg.net

Laurence Arnold, Adam Schank