



**Use of the Defense Production Act to Reduce
Interruptions in Critical Infrastructure and Key
Resource Operations During Emergencies**

Calendar Year 2010 Report to Congress

May 25, 2011



**Homeland
Security**

Federal Emergency Management Agency

MAY 25 2011



**Homeland
Security**

Foreword

I am pleased to present the following report, "Use of the Defense Production Act to Reduce Interruptions in Critical Infrastructure and Key Resource Operations During Emergencies" for Calendar Year 2010. This report is required by Subsection 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 [Public Law 110-53]. The report is an interagency effort led by the Federal Emergency Management Agency in the Department of Homeland Security and including the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, and Transportation.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Tim Johnson
Chairman
Senate Banking, Housing, and Urban Affairs Committee

The Honorable Richard C. Shelby
Ranking Member
Senate Banking, Housing, and Urban Affairs Committee

The Honorable Spencer Bachus
Chairman
House Financial Services Committee

The Honorable Barney Frank
Ranking Member
House Financial Services Committee

The Honorable Joseph I. Lieberman
Chairman
Senate Homeland Security and Governmental Affairs Committee

The Honorable Susan M. Collins
Ranking Member
Senate Homeland Security and Governmental Affairs Committee

Executive Summary

This is the fourth annual report to Congress on actions taken by the Federal Government using the priorities and allocations authority provided in Section 101 of the Defense Production Act of 1950 (DPA) to ensure the preparedness of industry to reduce interruption of critical infrastructure and key resource (CIKR) operations under emergency conditions. This report was prepared in accordance with Subsection 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 [Public Law (P.L.) 110-53]. The Department of Homeland Security (DHS) developed this report in cooperation with the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Energy (DOE), Health and Human Services (HHS) and Transportation (DOT). The reporting period for this report is from January 1, 2010 to December 31, 2010.

Section 101 authorizes the President to require acceptance and priority performance of contracts or orders and to allocate materials, services, and facilities to promote the national defense or to maximize domestic energy supplies. Executive Order (E.O.) 12919 delegates the President's priorities and allocations authorities to USDA, DOC, DOD, DOE, HHS, and DOT with respect to resources within each of these departments' jurisdictions. It provides that the priorities and allocations authorities may only be used for programs that have been determined to be "necessary or appropriate to promote the national defense" by DOD (for military and space programs), DOE (for energy resources), or DHS (for essential civilian needs).

Section 101(d) of the DPA directs the head of each of the six Federal departments to which the President has delegated priorities and allocations authority to issue final rules that establish standards and procedures by which this authority is used to promote the national defense. During 2010, an interagency working group, led by DHS, coordinated development of common provisions to be incorporated into the priorities and allocations rules of the six departments. These provisions, based on the Defense Priorities and Allocations System administered by DOC, establish a foundation for "a consistent and unified Federal priorities and allocations system," in accordance with section 101(d)(2) of the DPA.

In addition to developing new and updated guidance and procedures for use of the DPA section 101 authorities, the six Federal departments with delegated DPA priorities and allocations authorities and the departments with responsibilities for protection and restoration of critical infrastructure and key resource operations have continued to develop plans to use the authorities in support of emergency preparedness and response activities. These Federal departments and agencies have also provided for use of priority-rated contracts and orders, as needed and appropriate, to prevent or minimize interruptions in CIKR operations caused by acts of terrorism or natural disasters.

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1. Introduction

1.1. Purpose and Scope

This report was prepared pursuant to Subsection 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 [Public Law (P.L.) 110-53]. Subsection 1002(b) directs the Secretary of Homeland Security to submit an annual report to Congress on actions taken by the Federal Government to ensure, in accordance with Subsections (a) and (c) of Section 101 of the Defense Production Act of 1950 (DPA) [50 U.S.C. App. 2071], the preparedness of industry to reduce interruption of critical infrastructure¹ and key resource² (CIKR) operations during an act of terrorism, natural catastrophe, or other similar national emergency.³

This report was prepared by the Federal Emergency Management Agency in the Department of Homeland Security (DHS/FEMA) in cooperation with the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Energy (DOE), Health and Human Services (HHS), and Transportation (DOT). This report is being submitted to the Senate Committees on Banking, Housing, and Urban Affairs and Homeland Security and Governmental Affairs, and the House Committees on Financial Services and Homeland Security.

¹ As defined in the Defense Production Act of 1950, critical infrastructure means “any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health and safety.”

² As defined in the Homeland Security Act of 2002, key resources are “publicly or privately controlled resources essential to the minimal operations of the economy and government.”

³ Subsection 1002(b) reads as follows: “(b) Report on Industry Preparedness.--Not later than 6 months after the last day of fiscal year 2007 and each subsequent fiscal year, the Secretary of Homeland Security, in cooperation with the Secretary of Commerce, the Secretary of Transportation, the Secretary of Defense, and the Secretary of Energy, shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Financial Services and the Committee on Homeland Security of the House of Representatives a report that details the actions taken by the Federal Government to ensure, in accordance with Subsections (a) and (c) of Section 101 of the Defense Production Act of 1950 [50 U.S.C. App. 2071], the preparedness of industry to reduce interruption of critical infrastructure and key resource operations during an act of terrorism, natural catastrophe, or other similar national emergency.”

1.2. Background

1.2.1. Protection of Critical Infrastructure and Key Resources (CIKR)

Protection of the Nation's critical infrastructure and key resources is one of the core missions of the Department of Homeland Security. Through the efforts of its Office of Infrastructure Protection (DHS/IP), DHS is at the forefront for promoting industry preparedness to reduce interruption of CIKR operations. DHS works with industry on a daily basis to reduce both the likelihood and consequences of interruptions to CIKR operations due to terrorism, natural catastrophes, or other national emergencies.

DHS is responsible for coordinating interagency CIKR protection and resilience and emergency preparedness planning efforts, including the National Preparedness Guidelines, the National Response Framework (NRF), and the National Infrastructure Protection Plan (NIPP). Together these strategic documents provide the context for integrating critical infrastructure protection and resilience as a key component of the Nation's unified approach to homeland security. They provide a concept of operations and a framework for implementation of the DPA provisions when relevant and appropriate to address processes for reducing interruptions of CIKR operations under terrorist threats and emergency conditions.

Federal Government policies for CIKR protection, resilience, and restoration charge the Secretary of Homeland Security with responsibility for coordinating the national effort to enhance CIKR protection and resilience. Federal Government policy, through Homeland Security Presidential Directive 7 (HSPD-7) and the NIPP, also designates Federal Sector-Specific Agencies (SSAs) with responsibility for coordinating planning, preparedness, and protection activities within the 18 identified CIKR sectors and authorizes the Secretary to designate additional sectors. This approach provides the structure needed to address the unique characteristics and operating models of each of the CIKR sectors.

The overarching framework for the critical infrastructure mission is outlined in the NIPP and supporting Sector-Specific Plans (SSPs). The NIPP serves as the foundation for the integrated risk-informed approach used by government and private sector partners to identify, assess, and prioritize risks to CIKR and implement programs to enhance CIKR protection and resilience. The NIPP, first issued in 2006, was updated and reissued in 2009. The CIKR sectors and the SSAs are listed in Table 1-1.

Table 1-1. Sector-Specific Agencies for CIKR

Sector-Specific Agency	CIKR Sector
Department of Agriculture ⁴ Department of Health and Human Services ⁵	Agriculture and Food
Department of Defense ⁶	Defense Industrial Base
Department of Energy ⁷	Energy
Department of Health and Human Services	Healthcare and Public Health
Department of the Interior	National Monuments and Icons
Department of the Treasury	Banking and Finance
Environmental Protection Agency	Drinking Water and Water Treatment Systems
Department of Homeland Security <i>Office of Infrastructure Protection</i>	Chemical Commercial Facilities Critical Manufacturing Dams Emergency Services Nuclear Reactors, Materials, and Waste Communications Information Technology
<i>Office of Cyber Security and Communications</i>	
<i>Transportation Security Administration</i> <i>Transportation Security Administration/U.S. Coast Guard</i> ⁸	Postal and Shipping Transportation Systems ⁹
<i>Federal Protective Service</i>	Government Facilities

⁴ The Department of Agriculture is responsible for agriculture and food (meat, poultry, and egg products)

⁵ The Department of Health and Human Services is responsible for food other than meat, poultry, and egg products.

⁶ Nothing in this plan impairs or otherwise affects the authority of the Secretary of Defense over the Department of Defense, including the chain of command for military forces from the President as Commander in Chief, to the Secretary of Defense, to the commander of military forces, or military command and control procedures.

⁷ The Energy Sector includes the production, refining, storage, and distribution of oil, gas, and electric power, except for commercial nuclear power facilities.

⁸ The U.S. Coast Guard is the SSA for the maritime transportation mode.

⁹ As stated in HSPD-7, the Department of Transportation and the Department of Homeland Security collaborate on all matters relating to transportation security and transportation infrastructure protection.

1.2.2. Defense Production Act

The Defense Production Act provides a number of important authorities to expedite and expand the supply of materials and services from the U.S. industrial base to protect and restore critical infrastructure and key resource operations, as well as to support military, energy, stockpiling, space, domestic disaster preparedness, and other homeland security programs.

This report focuses on use of the authorities provided in subsections 101(a) and 101(c) of the DPA. Subsection 101(a) authorizes the President to: (1) require acceptance and preferential performance of contracts or orders (other than contracts of employment) that he deems necessary or appropriate to promote the national defense; and (2) allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.¹⁰ Subsection 101(c) authorizes similar priorities and allocations actions to maximize domestic energy supplies, if the President finds that: (1) materials, services, and facilities needed to maximize domestic energy supplies are scarce, critical, and essential; and (2) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the priorities and allocations authority.¹¹

The President's authorities under subsection 101 are delegated in subsection 201(a) of Executive Order (E.O.) 12919 (National Defense Industrial Resources Preparedness) to:

¹⁰ Section 101(a) reads as follows: "(a) Allocation of Materials, Services, and Facilities. The President is authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense."

¹¹ (c) Domestic Energy; Materials, Equipment, and Services

(1) Notwithstanding any other provision of this Act [50 U.S.C. App. § 2061-2171], the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that—

(A) such materials, services, and facilities are scarce, critical, and essential—

(i) to maintain or expand exploration, production, refining, transportation;

(ii) to conserve energy supplies; or

(iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

- The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;
- The Secretary of Energy with respect to all forms of energy;
- The Secretary of Health and Human Services with respect to health resources;
- The Secretary of Transportation with respect to all forms of civil transportation;
- The Secretary of Defense with respect to water resources; and
- The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

Section 202 of E.O. 12919 provides that the section 201(a) authority of E.O. 12919 may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense by:

- DOD with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;
- DOE with respect to energy production and construction, distribution and use, and directly related activities; and
- DHS with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

In general, proposed uses of DPA Section 101 authority for protection or restoration of most types of critical infrastructure must first be determined by DHS to be “necessary or appropriate to promote the national defense.”

1.2.3. Federal Priorities and Allocations System (FPAS)

A new section 101(d) in the DPA, signed into law by the President on September 30, 2009, directs the head of each of the six Federal departments to which the President has delegated priorities and allocations authority to issue final rules that establish standards and procedures by which this authority is used to promote the national defense. An interagency working group (IWG) was established by DHS/FEMA to coordinate the rule-making efforts of these departments. The IWG met eight times between October 15, 2009, and March 3, 2010, and developed common provisions to be incorporated into the priorities and allocations rules of the six departments. These provisions establish a foundation for “a consistent and unified Federal priorities and allocations system,” in accordance with section 101(d)(2) of the DPA. The common provisions incorporate several key elements of the Defense Priorities and Allocations System administered by DOC: mandatory acceptance of priority-rated contracts and orders (“rated orders”), preferential scheduling of rated orders to meet delivery requirements, and extension of priority ratings by contractors to lower level suppliers and subcontractors.

2. Priorities and Allocations

Federal departments, both individually and collectively, have taken a number of actions to implement DPA Section 101 authorities in support of CIKR protection and restoration in recent years. Representatives of the Federal departments with delegated DPA authorities and responsibilities meet periodically to review DPA delegations and guidance with regard to CIKR protection and restoration. DPA authorities, including the priorities and allocations authority, have been incorporated into Federal emergency preparedness plans. This chapter describes recent and ongoing actions in all of these areas.

2.1. *Department of Agriculture*

The President has delegated DPA Section 101 authority to USDA with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer. In addition, the Stafford Act, E.O. 12656, and E.O. 12919 authorize the Secretary of Agriculture to establish plans to provide for the continuation of agricultural production, food processing, storage, and distribution through the wholesale level and to place priorities on contracts for continuation of agriculture production during times of national emergency (including national defense, domestic emergency preparedness, and CIKR protection).

USDA participated in the IWG meetings that developed common provisions in support of a unified Federal priorities and allocations system. USDA's Agriculture Priorities and Allocations System (APAS) regulation, submitted to the Office of Management and Budget for final review, approval and publication in the Federal Register, was developed using the common provisions established by the IWG and provides for USDA's support of agriculture production by ensuring agriculture producers, processors, distributors, and wholesalers give preferential scheduling to contracts for items necessary to promote the national defense (including for emergency preparedness activities and critical infrastructure protection and restoration). USDA anticipates its APAS rule to be implemented in FY 2011.

USDA has two programs that have been approved by the Secretary of Homeland Security for priorities and allocations support pursuant to section 202(c) of Executive Order 12919. They include:

1. Food and food resources (civilian): Programs involving food and food resources processing and storage in support of emergency preparedness activities conducted pursuant to Title VI of the Stafford Act. Such programs involve activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions that would be created by the hazard, and to make emergency repairs to, or the emergency restoration of, vital utilities and food resource facilities destroyed or damaged by the hazard. (A pre-approved program exists with the Department of Defense to provide food and food resources for the military. See Defense Program "C1," Schedule I to 15 CFR Part 700.)

2. Agricultural and food critical infrastructure protection and restoration: Programs to protect or restore the agriculture and food system from terrorist attacks, major disasters, and other emergencies. In Homeland Security Presidential Directive HSPD-9, Defense of United States Agriculture and Food, dated January 30, 2004, such programs involve activities and measures to:
 - 1) Identify and prioritize critical infrastructure and key resources in the agriculture and food system for establishing protection requirements;
 - 2) Develop awareness and early warning capabilities to recognize threats;
 - 3) Mitigate vulnerabilities at critical production and processing nodes;
 - 4) Enhance screening procedures for domestic and imported products; and
 - 5) Enhance response and recovery procedures.

These two programs ensure the continuation and viability of the agriculture and food sectors to support the national defense, including emergency preparedness activities and critical infrastructure protection and restoration.

USDA also has one program that has been approved by the Secretary of Defense specifically for provision of combat food rations.

USDA and DOC also concluded an arrangement that authorized FEMA to place priority ratings, in accordance with DOC's DPAS, on orders for food resources to support FEMA's emergency preparedness activities beginning in July 2010 and ending at the time USDA's APAS is implemented or June 30, 2011, whichever comes first.

2.2. *Department of Commerce*

DOC is delegated authority, through E.O. 12919, to implement the DPA priorities and allocations provisions for industrial resources.¹² DOC has continuously administered a priorities and allocations system for industrial resources since 1950. DOC's Bureau of Industry and Security (DOC/BIS) administers the DPAS and may exercise priorities and allocations authority to ensure the timely delivery of industrial items to meet approved programs (including homeland security, and critical infrastructure protection and restoration activities) requirements. The DPAS establishes procedures for the placement, acceptance, and performance of priority-rated contracts and orders and for the allocation of materials, services and facilities. All companies in the United States must comply with the provisions of the DPAS regulation.

DOC/BIS has delegated authority to DOD, DOE, DHS, and the General Services Administration, in accordance with the DPAS regulation and under the authority of the Defense Production Act and E.O. 12919, to place priority ratings on contracts or orders for industrial resources to support programs determined by DOD, DOE, or DHS as "necessary or appropriate to promote the national defense." DOC/BIS may also authorize other government agencies, foreign

¹² For the purposes of DPAS, "industrial resources" includes all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 12919 (e.g., food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer, all forms of energy, health resources, all forms of civil transportation, and water resources).

governments, owners and operators of critical infrastructure, or companies to place priority ratings on contracts or orders for industrial resources on a case-by-case basis. Such requests must first be determined “necessary or appropriate to promote the national defense” by DOD, DOE, or DHS.

DOC/BIS has also authorized other Federal agencies, on a case-by-case basis, to place priority ratings on orders to expedite the delivery of industrial resources necessary or appropriate to support the protection of government facilities, a critical infrastructure sector. In addition, DOC’s DPAS delegation to DOD provides that DOD may authorize persons to place rated orders for delivery of production or construction equipment required to support DOD-approved programs and projects, when the equipment is necessary for the timely performance or completion of rated contracts or orders and timely delivery of the equipment cannot be obtained otherwise. DOD has authorized companies in the defense industrial base, a critical infrastructure sector, to place priority ratings on orders to expedite the delivery of industrial resources, including supporting recovery from industrial accidents that have adversely impacted production capabilities.

2.3. Department of Defense

2.3.1. Defense Priorities and Allocations System (DPAS)

The DPAS provides DOD with powerful authorities to help protect our Nation. DOC has delegated to DOD authority under the DPAS to:

- Apply priority ratings to contracts and orders supporting approved national defense programs; and
- Request that DOC provide Special Priorities Assistance (SPA) to resolve problems involving rated contracts and orders and authorize use of priority ratings by foreign firms.

Except for end items that are commonly available in commercial markets in sufficient supply and for items to be used primarily for administrative purposes, all DOD contracts for industrial resources (including construction contracts and Foreign Military Sales contracts) are rated orders under the DPAS. DOD uses two levels of rating priority, identified by the rating symbols "DO" or "DX." If a contractor cannot meet all required delivery dates because of schedule conflicts, DO-rated orders automatically must be given preference over unrated orders and DX-rated orders automatically must be given preference over DO-rated orders and unrated orders. Such preferential treatment is necessary even if it requires the diversion of items being processed for delivery against lower rated or unrated orders. Only the Secretary and Deputy Secretary of Defense can authorize DOD programs to use a DX rating.

2.3.2. Priority Allocation of Industrial Resources

On occasion, military operations may require increased or accelerated delivery of weapons, supplies, and systems. These emergent requirements may create competing demands within DOD for limited industrial resources. The Department’s Priority Allocation of Industrial Resources (PAIR) Task Force is charged to ensure that industrial resources are allocated among

DOD programs in a comprehensive and integrated manner, in accordance with operational priorities. The PAIR Task Force's mission is to:

- Determine the industrial resources required to accomplish emergent plans;
- Identify any conflicting DOD demands on these resources; and
- Devise approaches to resolve these conflicts based on warfighting requirements established by the Joint Chiefs of Staff.

The Task Force typically utilizes the DPAS to implement production resource allocation (delivery) decisions as needed to resolve competing requirements among defense-related critical infrastructure for limited resources. The Office of the Under Secretary of Defense for Acquisition, Technology and Logistics usually issues a request for Special Priorities Assistance (see 2.3.3) to the Department of Commerce to prioritize materials or expedite deliveries of defense items, in accordance with PAIR decisions.

For example, the PAIR process was used to assist an Intelligence, Surveillance and Reconnaissance (ISR) Task Force chartered by the Secretary of Defense with the rapid acquisition and deployment of ISR systems. Particularly noteworthy, the PAIR resolved a delivery constraint that, if left unaddressed, would have significantly delayed operational fielding. Multiple buying activities placed or were about to place competing purchase orders for hundreds of sensor arrays from a single supplier located in a Security of Supply (SoS) partner nation. The Department has established SoS arrangements with some of its closest allies to provide reciprocal priority and allocation support. The supplier was informed of the arrangement between the U.S. and its government and explained the importance of the requirement. As a result, the supplier agreed to increase production capacity, thereby ensuring the simultaneous and on-time delivery of antennas for multiple ISR systems.

2.3.3. Special Priorities Assistance (SPA)

Although the DPAS is largely self-executing, the contractor or DOD may ask DOC for SPA to resolve any problem that may occur. SPA is a process used to:

- Expedite delivery at any level of the supply chain to meet a specific need or to accelerate delivery under a rated order due to a change in military urgency;
- Resolve delivery conflicts among various rated orders; and
- Authorize an industrial priority rating for foreign nation defense contracts within the United States, when such authorization would further U.S. national defense interests.

Any entity within the acquisition or production supply chain of a rated order may request SPA. If SPA requests cannot be resolved within DOD, the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics is authorized to endorse the request for SPA and forward it to DOC for action.

2.4. *Department of Energy*

DOE derives its authorities and procedures with respect to DPA Subsections 101(a) and 101(c) from several sources:

- E.O. 12919 has several provisions regarding use of priorities and allocations authority with respect to energy resources:
 - Section 201 delegates the President’s priorities and allocations authority with respect to “all forms of energy” to the Secretary of Energy;
 - Section 202 states that DPA Section 101 authority may only be used “with respect to energy production and construction, distribution and use, and directly related activities” to support programs that have been determined by the Secretary of Energy to be necessary or appropriate to promote the national defense; and
 - Section 203 of E.O. 12919 delegates the President’s authority under Subsection 101(c), which involves maximizing domestic energy supplies, to the Secretary of Commerce but provides that DOC re-delegates to DOE the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services and facilities are critical and essential. The Secretary of Commerce makes the finding described in 101(c)(2)(A) that the materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that is necessary to use the authority provided by subsection 101(c)(1).
- 10 C.F.R. Part 221 sets forth the procedures to be used by DOE and DOD, pursuant to the DPA, whenever the priority supply of crude oil and petroleum products is necessary or appropriate to meet national defense needs.
- 10 C.F.R. Part 216 describes and establishes the procedures to be used by DOE to make the findings required by DPA Section 101(c)(2)(A). This regulation was updated in 2008.
- 10 C.F.R. Part 217 expands upon 10 C.F.R. Part 216, as it implements DOE’s administration of priorities and allocations actions in order to promote the national defense pursuant to its DPA authorities other than Section 101(c). DOE is in the process of promulgating these regulations.¹³
- A Memorandum of Understanding between DOE and DOC spells out the respective jurisdictions and responsibilities of these two departments for products and equipment associated with the production of petroleum and gas.

¹³ Final publication of 10 C.F.R. Part 217 should be finished by the time this Report is submitted to Congress.

2.4.1. Use of DPA Section 101 Authorities to Reduce Interruption of Energy Resources

It has rarely been necessary to consider use of the priority authority to address emergency supply needs to restore electric power, because it is common industry practice for affected utilities to “borrow” needed components from unaffected utilities, when such components are available. Certain high impact but low frequency events, such as major earthquakes or solar electromagnetic pulse circumstances, may require use of priority ratings to assist utilities with restoration and recovery.

DOE includes priority ratings in its maintenance and operations contracts for national laboratories and other facilities that support DOD nuclear programs. These contracts support efforts to protect and restore operations at these facilities, in the event of a disruption caused by an act of terrorism, natural catastrophe, or other similar national emergency.

2.4.2. Conclusion

DOE has not encountered emergency conditions requiring use of DPA Sections 101(a) and 101(c) authorities to reduce interruptions in energy supplies caused by natural or man-caused disasters since the DPA definition of “national defense” was expanded in 2003 to include “critical infrastructure protection and restoration.” Nevertheless, in cooperation with DHS, DOC, DOD, HHS and DOT, DOE adopted common provisions in 10 C.F.R. 217 in order to fulfill its congressional mandate. DOE has considered the use of these authorities in response to a number of emergency preparedness and disaster response cases since 2003 but has determined, in each case, that priorities or allocations action was not needed to protect or restore the impacted energy supplies. The fact that these authorities were not used in 2010 for protection and restoration of energy resources does not lessen their potential importance for addressing energy supply problems caused by catastrophic disasters or other threats to national defense and homeland security.

2.5. *Department of Health and Human Services*

Section 201(a)(3) of E.O. 12919 delegates to the Secretary of HHS the President’s authority under Section 101 of the DPA to require acceptance and priority performance of contracts and orders with respect to health resources. HHS is drafting a regulation titled “Health Resources Priorities and Allocations System Regulations” to establish an HHS system for priority ratings, procedures for both HHS agencies and other Federal agencies to request priority-rating authorization and preferential scheduling, and a framework for HHS to consider and act on such requests. The regulation will also cover acceptance and rejection of rated orders, usage of rated orders, resolution of conflicts between rated orders, changes or cancellation of rated orders, limitations on rated orders, extension or priority rating, and limitations on the use or issuance of such orders. The proposed regulation will amend the HHS Acquisition Regulation. This regulation was constructed after an interagency working group, hosted by FEMA, completed work on common provisions during early 2010.

There were no contract awards that warranted DPA procedures in 2010. There were lessons learned in 2009 from the response to the H1N1 influenza pandemic that have been brought

forward to assist HHS to better structure preparedness approaches and to establish a better preparedness platform.

2.6. Department of Homeland Security

E.O. 12919 assigns a number of important responsibilities to the Secretary of Homeland Security with respect to DPA authorities. Responsibilities impacting the use of DPA authorities to ensure the preparedness of industry to reduce interruption of critical infrastructure and key resource operations include: (1) serving as an advisor to the National Security Council (NSC) on national security resource preparedness and use of DPA authorities; (2) providing coordination and guidance for use of these authorities by Federal departments and agencies; and (3) determining which civilian programs are eligible to be supported using the priorities and allocations authorities.

Under DPAS Delegation 4 from the Department of Commerce, the Secretary is also authorized to place priority-rated contracts and orders in support of DHS programs and on behalf of State and local governments with respect to emergency preparedness activities conducted pursuant to title VI of the Stafford Act. Within DHS, the Secretary's DPA responsibilities, including the DPAS Delegation 4 responsibilities, are delegated to the Administrator of FEMA, who has exercised the Government-wide DPA coordination and guidance for more than 30 years. During 2010, DHS/FEMA took action in a number of areas to help ensure the preparedness of industry to reduce interruption of CIKR operations under emergency conditions:

1. Pursuant to the DPA coordination and guidance responsibilities, DHS/FEMA established an interagency working group (IWG) to coordinate priorities and allocations rule-making by the six resource departments that are delegated DPA section 101 authority in E.O. 12919. The work of the IWG was completed in March 2010, but DHS/FEMA continued to work with the resource departments, throughout 2010, to support their efforts to develop and issue final priorities and allocations rules.
2. Pursuant to the delegation of authority under DPAS Delegation 4, DHS/FEMA authorized use of priority-rated contracts and orders in support of DHS programs, involving or potentially involving protection and restoration of critical infrastructure operations, including:
 - a. Emergency preparedness, response, and recovery activities, associated with the 2010 hurricane season, conducted pursuant to title VI of the Stafford Act; and
 - b. Homeland Security Technology Programs, supporting critical infrastructure protection and restoration activities (as well as border and transportation security and counter-terrorism activities).
3. Pursuant to the DHS responsibility under section 202(c) of E.O. 12919 to determine which civilian programs are eligible to be supported using the DPA section 101 authority, DHS/FEMA made a number of new determinations regarding program eligibility under the Federal Priorities and Allocations System. Program determinations specifically involving critical infrastructure protection and restoration included:

- **Programs to protect or restore critical infrastructure.** This includes U.S. critical infrastructure and key resource operations, as identified in relevant statutes, executive orders, Presidential directives, national strategies, and other Federal planning documents, such as: Homeland Security Presidential Directive (HSPD) 7 (“Critical Infrastructure Identification, Prioritization, and Protection”); the National Strategy for the Physical Protection of Critical Infrastructure and Key Assets; and the National Infrastructure Protection Plan and supporting Sector-Specific Plans.
 - **Programs to protect or restore the agriculture and food system from terrorist attacks, major disasters, and other emergencies.** In HSPD 9, Defense of United States Agriculture and Food, dated January 30, 2004, such programs involve activities and measures to: (a) identify and prioritize critical infrastructure and key resources in the agriculture and food system for establishing protection requirements; (b) develop awareness and early warning capabilities to recognize threats; (c) mitigate vulnerabilities at critical production and processing nodes; (d) enhance screening procedures for domestic and imported products; and (e) enhance response and recovery procedures. These programs ensure the continuation and viability of the agriculture and food sectors to support the national defense, including emergency preparedness activities and critical infrastructure protection and restoration.
4. DHS/FEMA developed internet-based training courses and updated DPAS Delegation 4 guidance for FEMA and other DHS personnel involved in placing priority-rated contracts and orders for programs involving critical infrastructure protection and restoration, as well as other programs eligible for support using the DPA priorities authority under DPAS.

2.7. Department of Transportation

The DOT is delegated DPA Section 101 authority with respect to all forms of civil transportation. The DOT’s plans and procedures to address civil transportation preparedness and response for emergency conditions are addressed in Emergency Support Function #1 (Transportation) of the National Response Framework, which therefore also addresses use of DPA authorities in emergency conditions. The Federal Aviation Administration Crisis Management Handbook also contains guidance regarding the DPA. In addition, the DOT ensures that senior leadership and necessary decision-makers are briefed on the applicability of the DPA for reducing disruptions to critical infrastructure in emergency conditions.

The DOT is developing a rule for the execution of the DOT’s priorities and allocations authorities, as required by the DPA Reauthorization Act of 2009. This rule clarifies the prioritization and allocation authorities exercised by the DOT under Title I of the DPA and sets forth the administrative procedures by which the DOT will exercise this authority. To the extent practicable, this rule follows the principles of “a consistent and unified Federal priorities and allocations system,” in accordance with section 101(d)(2) of the DPA (see Section 1.2.3. of this

report for more). The DOT anticipates its Transportation Priorities and Allocations System (TPAS) rule will be finalized and implemented in FY 2011.

The U.S. Maritime Administration (MARAD) has a long-established regulation derived from the DPA:

- 46 C.F.R. Part 340—Priority Use and Allocation of Shipping Services. This regulation is designed to ensure that the DOD will have access, as necessary, to shipping services and port facilities in crisis or war.

The MARAD is currently reviewing this existing regulation to determine if it will require modification to conform to any final rules issued by the DOT.

Appendix A. Acronyms

APAS	Agriculture Priorities and Allocation System
CIKR	Critical Infrastructure and Key Resources
DHS	Department of Homeland Security
DHS/FEMA	Department of Homeland Security/Federal Emergency Management Agency
DHS/IP	Department of Homeland Security/Office of Infrastructure Protection
DOC	Department of Commerce
DOC/BIS	Department of Commerce/Bureau of Industry and Security
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
DPA	Defense Production Act of 1950
DPAS	Defense Priorities and Allocations System
FPAS	Federal Priorities and Allocations System
E.O.	Executive Order
FY	Fiscal Year
HHS	Department of Health and Human Services
HSPD	Homeland Security Presidential Directive
ISR	Intelligence, Surveillance, Reconnaissance Systems
IWG	Interagency Working Group
MARAD	Maritime Administration
NIPP	National Infrastructure Protection Plan
NRF	National Response Framework
NSC	National Security Council
PAIR	Priority Allocation of Industrial Resources
P.L.	Public Law
SoS	Security of Supply
SPA	Special Priorities Assistance
SSAs	Sector-Specific Agencies
SSPs	Sector-Specific Plans
TPAS	Transportation Priorities and Allocations System
USDA	United States Department of Agriculture