

U.S. Department of Commerce

DPAS Delegation 4

DELEGATION OF AUTHORITY TO THE SECRETARY OF HOMELAND SECURITY

Defense Priorities and Allocations System

(15 CFR Part 700)

A. Authority.

Title I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4051, et seq.), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.), and Executive Order 13603 (77 FR 16651, 3 CFR, 2012 Comp., p. 225); and Executive Order 12656 (53 FR 226, 3 CFR, 1988 Comp. 585).

B. Purpose.

This document delegates certain authority under the Defense Production Act to the Secretary of Homeland Security (“the Secretary”) necessary for the effective implementation of the Defense Priorities and Allocations System (“DPAS”) regulation (15 CFR part 700). The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders for industrial resources, in support of programs that have been determined to be necessary or appropriate to promote the national defense. The Defense Production Act’s definition of national defense means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. National defense includes emergency preparedness activities conducted pursuant to Title VI of the Stafford Act and critical

infrastructure protection and restoration. Industrial resources means all materials, services and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603.

C. Rating Authority.

The Secretary is delegated authority under the DPAS to:

- (1) Place DO priority rated contracts and orders for industrial resources in support of (i) Department of Homeland Security (“DHS”) programs and (ii) state, local, tribal, and territorial government programs determined by the Secretary as necessary or appropriate to promote the national defense, as defined in Section 702(14) of the Defense Production Act, in accordance with Section 202 of Executive Order 13603 (i.e., approved programs). In placing these rated orders for industrial resources, DHS must use the appropriate program identification symbol listed in Schedule I to the DPAS regulation. DHS may also authorize other federal agencies to place DO priority ratings on contracts or orders for industrial resources in support of approved programs when such agencies are doing the procurement on behalf of DHS.
- (2) Authorize state, local, tribal, and territorial governments to place DO priority rated contracts and orders for industrial resources to support state, local, tribal, and territorial government emergency preparedness, mitigation, response and recovery programs determined by the Secretary as necessary or appropriate to promote the national defense.
- (3) Endorse, and forward to the Department of Commerce (“DOC”) for appropriate action, the requests of other U.S. agencies for authority to place DO priority rated contracts and orders for industrial resources in support of programs determined by the Secretary as necessary or appropriate to the promote the national defense.

(4) Endorse, and forward to DOC for appropriate action, the requests of owners and operators of critical infrastructure to place DO priority rated contracts and orders for industrial resources in support of critical infrastructure protection or restoration related-programs determined by the Secretary as necessary or appropriate to promote the national defense.

(5) Endorse, and forward to DOC for appropriate action, requests to place DO priority rated contracts and orders for industrial resources in support of critical infrastructure assistance to any foreign nation or international organization determined by the Secretary as necessary or appropriate to promote the national defense.

(6) Place priority ratings on contracts and orders for industrial resources needed to implement any program related to food resources, energy resources, health resources, civil transportation, or water resources determined by the Secretary as necessary or appropriate to promote the national defense and authorized for priorities support by the appropriate resource agency (i.e., the Departments of Agriculture, Energy, Health and Human Services, Transportation, or Defense). DHS; associated agency (ies); state, local, tribal, and territorial governments; and recipients of rated orders must use the same rating and the same program identification symbol on such contracts and orders for industrial resources as authorized by the appropriate resource agency to support the approved program. However, any priority rated contract or order for industrial resources placed to implement an approved program related to food resources, energy resources, civil transportation, or water resources remain subject to the DPAS.

D. Acceptance and Rejection Requirements for Emergency Preparedness Activities.

The Secretary is delegated authority to:

- (1) Place DO priority rated contracts and orders for industrial resources that include the statement set forth in 15 C.F.R. § 700.12(b) if the rated contract or order for industrial resources is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements. The minimum times for acceptance or rejection that such DHS orders may specify are six (6) hours after receipt of the order if the order is issued in response to a hazard that has occurred, or twelve (12) hours after receipt if the order is issued to prepare for an imminent hazard.
- (2) Authorize associated agency (ies); state, local, tribal, and territorial governments; and recipients of rated orders to place DO priority rated contracts and orders for industrial resources that include the statement set forth in 15 C.F.R. § 700.12(b) if the rated contract or order for industrial resources is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements. The minimum times for acceptance or rejection that such DHS orders may specify are six (6) hours after receipt of the order if the order is issued in response to a hazard that has occurred, or twelve (12) hours after receipt if the order is issued to prepare for an imminent hazard.

Notice of the use of this authority to respond to a hazard that has occurred or to prepare for an imminent hazard must be provided to DOC at the earliest possible time.

E. Special Priorities Assistance.

The Secretary may sponsor to DOC requests by persons for special priorities assistance related to industrial resources upon determining the need for the requested assistance in support of DHS approved programs. DHS will: (i) serve as the initial point of contact for persons

needing assistance; (ii) verify the accuracy of the information provided and make reasonable efforts to resolve the issues; and, when necessary, (iii) expeditiously forward the request to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DHS advised of progress.

F. Re-delegation of Authority.

The authority granted by this delegation may be re-delegated within DHS. It may not be re-delegated to any other U.S. agency without the written concurrence of DOC except in time of, or in anticipation of, a catastrophic hazard. Notice of such emergency re-delegation must be provided to DOC at the earliest possible time. Any other U.S. agency re-delegated this authority by DHS shall be deemed an “associated agency” of DHS.

G. Compliance, Audits, and Training.

In exercising this delegation, the Secretary shall ensure that DHS; associated agency (ies); state, local, tribal, and territorial governments; and recipients of rated orders are in full compliance with the provisions of the DPAS. Accordingly:

- (1) The Secretary, in consultation with DOC, shall provide DOC with an annual report on the use of this delegated authority by DHS, any associated agency (ies), and state, local, and tribal governments.
- (2) The Secretary is delegated the authority to review the implementation of the DPAS by all persons who receive, or are authorized to place, rated orders for industrial resources supporting DHS approved programs, including critical infrastructure protection and restoration. However, this review shall not include inquiries into the unrated business of these persons.

(3) The Secretary shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act and the DPAS related to contracts and orders for industrial resources.

(4) In coordination with DOC, the Secretary shall conduct a continuing training program to ensure that DHS; associated agency (ies); state, local, tribal, and territorial governments; and recipients of rated orders are thoroughly familiar with the provisions of the DPAS and this delegation.

H. Limitations of Authority.

Any authority not specifically delegated to the Secretary in this delegation is reserved by DOC. This delegation shall be implemented in accordance with the DPAS and any other related regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 13603 or any other authority.

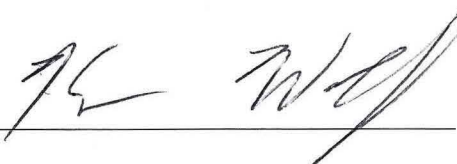
(1) Except when being used in support of approved programs involving emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster and Emergency Assistance Act (42 U.S.C. § 5195, *et seq.*), this delegated authority may not be used to support the procurement of any items subject to the jurisdiction of the DPAS that (a) are commonly available in commercial markets for general consumption; (b) do not require major modifications when purchased for approved program use; and (c) are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

(2) This delegated authority shall not be used to support the procurement of any items subject to the jurisdiction of the DPAS to be used primarily for administrative purposes, such as for personnel or financial management.

I. Effective Date and Revocation of Previous Delegations.

This delegation of authority shall take effect immediately as of the date of its execution, revoking all previous delegations of authority issued by DOC to DHS relating to these authorities.

Dated: 3/8/16



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DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

SCHEDULE I TO PART 700

DEPARTMENT OF HOMELAND SECURITY APPROVED PROGRAMS

Program Identification
Symbol

N1	Federal emergency preparedness, mitigation, response, and recovery
N2	State, local, tribal, and territorial government emergency preparedness, mitigation, response, and recovery
N3	Intelligence and warning systems
N4	Border and transportation security
N5	Domestic counter-terrorism, including law enforcement
N6	Chemical, biological, radiological, and nuclear countermeasures
N7	Critical infrastructure protection and restoration
N8	Miscellaneous