



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

Calendar Year 2020 Report to Congress

September 13, 2021



**Homeland
Security**

Federal Emergency Management Agency

Table of Contents

Message from the FEMA Administrator	2
Executive Summary	4
1 Introduction	5
1.1 Purpose and Scope	5
1.2 Background.....	5
1.2.1 Critical Infrastructure Security.....	5
1.2.2 Priorities and Allocations Authority	7
2 Protection and Restoration of Critical Infrastructure	9
2.1 Department of Commerce.....	9
2.2 Department of Defense	11
2.3 Department of Energy.....	11
2.4 Department of Homeland Security	12
2.5 Department of Transportation.....	13
2.6 Department of Health and Human Services.....	13
Appendix A: Acronyms	17

Message from the FEMA Administrator

I am pleased to submit the Calendar Year (CY) 2020 report to Congress entitled: “Use of the Defense Production Act to Reduce Interruptions in Critical Infrastructure and Key Resource Operations During Emergencies.”

The report focuses on use of the President’s priorities and allocations authority under sections 101(a) and (c) of the Defense Production Act [50 U.S.C. § 4511(a) and (c)] to ensure 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.



Section 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 [Public Law 110-53] directs this report be submitted 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. Accordingly, this report is provided to:

The Honorable Sherrod Brown
Chairman, Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Patrick J. Toomey
Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Maxine Waters
Chairwoman, House Committee on Financial Services

The Honorable Patrick McHenry
Ranking Member, House Committee on Financial Services

The Honorable Gary C. Peters
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Rob Portman Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Bennie G. Thompson
Chairman, House Committee on Homeland Security

The Honorable John Katko
Ranking Member, House Committee on Homeland Security

Inquiries regarding this report may be directed to FEMA's Congressional and Intergovernmental Affairs Division by telephone at (202) 646-4500.

Sincerely,

A handwritten signature in blue ink that reads "Deanne Criswell". The signature is written in a cursive style with a large initial "D".

Deanne Criswell
FEMA Administrator

Executive Summary

This is the fourteenth annual report to Congress on actions taken by the Federal Government using the priorities and allocations authority provided in sections 101(a) and (c) of the Defense Production Act of 1950 (DPA), as amended, to ensure the preparedness of industry to reduce interruption of critical infrastructure and key resource operations during an act of terrorism, natural catastrophe, or other national emergency. This report is required by section 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53). The reporting period for this report is January 1, 2020, to December 31, 2020.

Section 101(a) of the DPA authorizes the President to require acceptance and priority performance of contracts or orders and 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. Section 101(c) of the DPA authorizes the use of the priorities and allocations authorities for materials, equipment, and services to maximize domestic energy supplies.

Through Executive Order (EO) 13603,¹ the President delegates priorities and allocations authorities to the Secretaries of six federal departments (“Resource Departments”) with respect to resources within each department’s responsibilities and expertise. The E.O. states that these authorities may only be used for programs determined in writing as necessary or appropriate to promote the national defense. The responsibilities for making this determination are assigned to the Secretaries of Defense (for military and space programs), Energy (for energy programs), and the Homeland Security (for all other national defense programs, including civil defense and continuity of government). In addition, Executive Order 13911 issued in March 2020, conditionally granted the Department of Homeland Security (DHS) equivalent DPA authorities to those of the Department of Health and Human Services (HHS) with respect to coronavirus (COVID-19) response efforts, temporarily delegating DHS to serve as a seventh Resource Department.

During 2020, the federal government had to respond to the COVID-19 outbreak with robust and novel efforts using DPA authorities to support public health and critical healthcare infrastructure. Federal departments and agencies continued to develop and implement plans and programs to make effective use of the priorities and allocations authorities for protection and restoration of critical infrastructure.

¹ “National Defense Resources Preparedness,” 77 Fed. Reg. 16651 (Mar. 22, 2012)

1 Introduction

1.1 Purpose and Scope

This report was prepared pursuant to section 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53). Section 1002(b) directs the Secretary of Homeland Security to submit an annual report to Congress on the Federal Government's actions to ensure, in accordance with sections 101(a) and (c) of the DPA, as amended (50 U.S.C. §§ 4501 et seq.), the preparedness of industry to reduce interruption of critical infrastructure² and key resource operations (hereinafter "critical infrastructure") during an act of terrorism, natural catastrophe, or other national emergency.³ This report was prepared by DHS in cooperation with the Departments of Commerce (DOC), Defense (DOD), Energy (DOE), and Transportation (DOT). Within DHS, preparation of this report was coordinated by the Federal Emergency Management Agency (FEMA), and the Cybersecurity and Infrastructure Security Agency (CISA). FEMA serves as executive agent for the DHS Secretary's DPA authority and functions, and CISA is responsible for implementing DHS responsibilities for critical infrastructure security and resilience.

Development of this report involved: (1) interagency meetings and conference calls to provide direction and coordination for the drafting of each department's input; (2) preparation of report language by personnel engaged in DPA programs and critical infrastructure protection and restoration activities; (3) consolidation of each department's input into this report; and (4) review and approval of the consolidated report by departments whose actions are described herein.

1.2 Background

1.2.1 Critical Infrastructure Security

Ensuring the security and resilience of the Nation's critical infrastructure is one of DHS' primary mission essential functions. Through the efforts of CISA, DHS is at the forefront for coordinating a national effort to secure the nation's critical infrastructure.⁴ This includes building preparedness capacity nationally with public and private sector partners to reduce interruption of critical infrastructure.⁵ DHS works to continuously provide owners and operators with analysis

² As defined in the DPA, as amended (50 U.S.C. 4552(2)), 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 or safety."

³ Section 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, 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."

⁴ See 6 U.S.C. § 652.

⁵ 42 U.S.C. § 5195c, 6 U.S.C. § 652.

and mitigation recommendations to reduce both the likelihood and consequences of interruptions to this critical infrastructure due to terrorism, natural catastrophes, cyber-attacks and systems degradation, or other national emergencies.⁶

DHS is responsible for coordinating interagency critical infrastructure security and resilience and emergency preparedness planning efforts, to include implementing relevant provisions of the Homeland Security Act and Presidential authorities pertaining to critical infrastructure.⁷ DHS is also responsible for coordinating with both government and private sector critical infrastructure owners and operators to implement specific responsibilities identified in the National Infrastructure Protection Plan, National Preparedness Goal, and the National Planning Frameworks and Interagency Operational Plans for Prevention, Protection, Mitigation, Response, and Recovery. These strategic documents provide context for integrating critical infrastructure security and resilience as a key component of the Nation's unified approach to homeland security. They also provide context for implementation of the DPA provisions when appropriate for reducing interruptions of critical infrastructure operations under terrorist threats, natural disasters, and other emergency conditions.

Presidential Policy Directive 21 (PPD-21), *Critical Infrastructure Security and Resilience*, charges the Secretary of Homeland Security with providing strategic guidance, promoting a national unity of effort, and coordinating the overall federal effort to promote the security and resilience of the Nation's critical infrastructure. PPD-21 also designates federal Sector-Specific Agencies (SSAs)⁸ to coordinate day-to-day sector-specific activities; carry out incident management responsibilities (consistent with statutory authority and other appropriate policies, directives, or regulations); provide, support, or facilitate technical assistance and consultations for sectors to identify vulnerabilities; and help mitigate incidents and carry out a range of responsibilities, including incident response and emergency preparedness responsibilities. These responsibilities include coordinating with critical infrastructure owners and operators and supporting the Secretary of Homeland Security with annual sector-specific critical infrastructure information. This approach provides the structure to address the unique characteristics and operating models of each of the critical infrastructure sectors.

The overarching framework for the critical infrastructure mission is outlined in the National Infrastructure Protection Plan and supporting Sector-Specific Plans. This plan serves as the foundation for the integrated risk-informed approach used by government and private sector partners to identify, assess, and prioritize risks to critical infrastructure, and to implement programs to enhance critical infrastructure protection and resilience.

Developed by DHS through a collaborative process with critical infrastructure partners at all levels of government and the private sector, the National Infrastructure Protection Plan captures the evolution and maturation of programs and processes established for enhancing public-private partnerships. This includes (1) implementing a consistent approach to critical infrastructure risk management; (2) a networked approach to information sharing; and (3) a focus on building national awareness, education, training, and exercises to ensure an effective and unified

⁶ See *ibid.*

⁷ 6 U.S.C. § 652

⁸ While PPD-21 uses the term "Sector Specific Agency" (SSA), section 9002 of the Fiscal Year (FY) 21 National Defense Authorization Act re-designated SSAs as "Sector Risk Management Agencies" (SRMAs).

infrastructure protection and resilience program over the long term. The National Infrastructure Protection Plan integrates the concepts of resilience and protection and broadens the focus of the National Infrastructure Protection Plan -related programs and activities to the all-hazards environment. The critical infrastructure sectors and the Sector Risk Management Agencies are listed in Table 1.

Sector Risk Management Agencies	Sector
Departments of Agriculture ⁹ and Health and Human Services ¹⁰	Food and Agriculture
Department of Defense	Defense Industrial Base
Department of Energy ¹¹	Energy
Department of Health and Human Services	Healthcare and Public Health
Department of the Treasury	Banking and Finance
Environmental Protection Agency	Water and Wastewater Systems
Departments of Homeland Security and Transportation	Transportation Systems ¹²
Department of Homeland Security and General Services Administration	Government Facilities ¹³
Department of Homeland Security	Chemical Commercial Facilities Communications Critical Manufacturing Dams Emergency Services Information Technology Nuclear Reactors, Materials, Waste

1.2.2 Priorities and Allocations Authority

Section 101(a) of the DPA authorizes the President to require acceptance and priority performance of contracts or orders and 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. Section 101(c) of the DPA authorizes the use of the priorities and allocations authorities for materials, equipment, and services to maximize domestic energy supplies.

⁹ The United States Department of Agriculture (USDA) is responsible for agriculture and food (meat, poultry, and egg products).

¹⁰ HHS is responsible for food other than meat, poultry, and egg products.

¹¹ The Energy Sector includes the production, refining, storage, and distribution of oil, gas, and electric power, except for commercial nuclear power facilities.

¹² PPD-21 designates DOT as a co-SSA with DHS for the Transportation Systems sector.

¹³ PPD-21 designates the General Services Administration as a co-SSA with DHS for the Government Facilities sector.

The DPA priorities and allocations authority has been a cornerstone of the DOD acquisition process since 1950. Beginning in 1970, Congress expanded the purpose of DPA authorities beyond support for military programs to include:

- Space (in 1970);
- Emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (in 1994);
- Critical infrastructure protection and restoration (in 2003); and
- Homeland security and critical infrastructure assistance to any foreign nation (in 2009).

In 2009, section 101 of the DPA was amended to direct the heads of federal agencies, to whom the President has delegated priorities and allocations authority, to issue rules that establish standards and procedures by which this authority is used to promote the national defense, under both emergency and nonemergency conditions. Since 2009, considerable effort has gone into developing, updating, and testing guidance and procedures for use of the priorities and allocations authority to support the full spectrum of national defense programs, including programs to protect and restore critical infrastructure.

In Executive Order 13603, the President's priorities and allocations authority is delegated to:

- The Secretary of Agriculture with respect to food resources (including potable water packaged in commercially marketable containers), food resource facilities, livestock resources, veterinary resources, plant health resources, 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 with respect to all other materials, services, and facilities, including construction materials.

In addition, Executive Order 13911 conditionally granted DHS equivalent DPA authorities of HHS with respect to COVID-19 response efforts and temporarily delegated DHS to serve as a seventh Resource Department. This authority was delegated by the DHS Secretary to the FEMA Administrator. In 2020, DHS/FEMA drafted Emergency Management Priorities and Allocations System (EMPAS) regulations to govern the use of this delegated authority. EMPAS was published January 8, 2021.

These departments are referred to as "Resource Departments" in the Federal Priorities and Allocations System (FPAS).

Section 202 of E.O. 13603 provides that priorities and allocations authority delegated under section 201 of E.O. 13603 may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense (hereinafter "Approved Programs") by:

- The Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the DOD, space, and directly related activities;

- The Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and
- The Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of government.

In general, proposed uses of DPA section 101 authority for protection or restoration of critical infrastructure must first be determined by DHS/FEMA¹⁴ to be “necessary or appropriate to promote the national defense.”¹⁵

2 Protection and Restoration of Critical Infrastructure

This chapter describes recent and ongoing actions to update and test guidance and procedures for use of the priorities and allocations authority and actual use of this authority to protect and restore critical infrastructure operations.

2.1 Department of Commerce

DOC is delegated authority, through EO 13603, to implement the DPA priorities and allocations provisions for industrial resources and has continuously administered a priorities and allocations system for industrial resources since 1950.¹⁶ DOC’s Bureau of Industry and Security (DOC/BIS) administers this authority through the Defense Priorities and Allocations System (DPAS) regulation (15 C.F.R. part 700) and may exercise priorities and allocations authority to ensure the timely delivery of industrial resources to meet Approved Programs (including homeland security and critical infrastructure protection and restoration activities) requirements. DOC/BIS updated the DPAS regulation in 2014 to reflect recent amendments to the DPA and the issuance of E.O. 13603. DOC/BIS has delegated specific priority rating authority with respect to industrial resources to DOD, DOE, DHS, and the General Services Administration (GSA), which authorizes these departments and agencies to use the DPAS to support their contracting activity without coming to DOC/BIS on a case-by-case basis. In calendar year 2020, DOC/BIS authorized additional federal agencies, on a case-by-case basis, to place DPAS priority ratings on contracts and orders to expedite the delivery of industrial resources to support critical infrastructure sectors.

DOC/BIS undertook seven official actions in calendar year 2020 related to COVID-19 response. Of the seven DPAS rating authorizations issued in response to COVID-19, two were issued to private companies that received funding under Title III of the DPA to expand production of health and medical resources to combat COVID-19. The other five DPAS rating authorizations were issued to U.S. Government agencies to assist with their COVID-19

¹⁴ The Secretary’s responsibility identified in Executive Order 13603 to make Section 202 determinations has been delegated to the FEMA Administrator.

¹⁵ FEMA carries out this responsibility per DHS Delegation 09052: Delegation of Defense Production Act Authority to the Administrator of the Federal Emergency Management Agency.

¹⁶ 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 E.O. 13603 (e.g., industrial resources do not include: food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources).

response, specifically:

1. A DPAS rating authorization was issued to GSA for the placement of DPAS priority ratings on contracts and orders for cleaning supplies for cleaning federal facilities and telework equipment to allow for U.S. Government agencies to expand their telework capability. This authority was not covered by GSA's DPAS delegation as the delegation only allows the agency to use the DPAS if it is purchasing items on behalf of DOD, DOE, or DHS for their Approved Programs.
2. A second DPAS rating authorization was issued to GSA for the placement of DPAS priority ratings on contracts and orders for information technology (IT) healthcare equipment to support the provision of health care in response to COVID-19. This request was primarily for the Department of Veterans Affairs (VA).
3. A DPAS rating authorization was issued to the Architect of the Capitol (AOC) for the placement of DPAS priority ratings on contracts and orders for cleaning products to support AOC's mission to oversee the maintenance and safety of Congressional and Supreme Court facilities.
4. A DPAS rating authorization was issued to DOD for the placement of contracts and orders for production and construction equipment supporting the Joint Acquisition Task Force (JATF) and Operation Warp Speed (OWS), which were formed by DOD and HHS to ramp up and expand domestic production capacity of critical health and medical resources in response to COVID-19. This authority was not covered by DOD's DPAS delegation.
5. A DPAS rating authorization was issued to HHS for the placement of contracts and orders for production and construction equipment supporting OWS projects.

Unrelated to COVID-19 response and recovery efforts, and working closely with DHS/FEMA, DOC/BIS undertook two additional official actions in calendar year 2020 for the placement of DPAS priority ratings on contracts and orders to expedite the delivery of industrial resources to support the protection of government facilities, a critical infrastructure sector. Specifically, DOC/BIS issued DPAS rating authorizations to the:

1. AOC to expedite contracts related to the Senate Legislative Garage Critical Infrastructure Upgrade project which the AOC needed to complete prior to the Presidential Inauguration on January 20, 2021.
2. Federal Bureau of Investigation (FBI) for contracts and orders to support the timely completion of the new Terrorist Explosive Device Analytical Center (TEDAC) Explosive Technical Laboratory (ETL) under construction at Redstone Arsenal, Alabama.

In 2018, working closely with DHS/FEMA, DOC/BIS provided rating authorization to the U.S. Census Bureau (Census) to support the United States Decennial Census 2020 (2020 Census) Technical Integrator (TI) Program and associated contracts in support of the 2020 Census through September 30, 2020. The Decennial Census is mandated by the U.S. Constitution to determine the number of seats each state has in the U.S. House of Representatives as well as the distribution of federal funds to local communities. In addition, the data collected from the Decennial Census supports homeland security, emergency preparedness and recovery, and

critical infrastructure resiliency and restoration by providing federal agencies and state and local governments the information they need about the populations they serve. The rating authorization provides the Census TI Program with a solution that details the strategies, plans, costs, risks, acquisitions, buildout specifications, implementation roadmap, and schedule of the physical and network architecture for the 2020 Census System of Systems. In CY 2020, Census reported placing two DPAS priority rated contracts for virtual desktop infrastructure expansion items to increase workforce efficiency necessary for a successful Decennial Census.

2.2 Department of Defense

DOD estimates it places approximately 300,000 rated orders each year and utilizes the Special Priorities Assistance (SPA) process to resolve rating conflicts within the Defense Industrial Base (DIB). During CY 2020, DOD continued to utilize the “DX” rating for a limited number of Defense programs the Secretary of Defense has identified as highest priority for national defense. During CY 2020, DOD provided continuous training to DOD program offices, industry, and other government agencies, to ensure the understanding and proper use of the DPA Title I authorities.

DOD provided support to the COVID-19 response as members of the FEMA-led Joint DPA Office. DOD worked in close coordination with HHS and FEMA to rate appropriate contracts in support of the production capacity expansion of the medical industrial base to meet the needs of the nation.

FEMA delegated to Army Corps of Engineers (USACE) the use of the DPAS Delegation 4 authority (from the Department of Commerce) to ensure on-time performance of contracts and orders in support of the Department of Homeland Security Approved Programs. A DPAS priority rating should be viewed as a form of insurance that comes into play when preferential treatment by a contractor may be required to meet contracted delivery dates. During the COVID-19 pandemic response effort, the USACE received multiple mission assignments, as requested by states and directed by FEMA, across the U.S. for the construction of Alternate Care Facilities to increase the states’ capability to treat patients. This was in direct support of the public health and healthcare critical infrastructure sector, as defined by DHS. USACE priority rated contracts through a delegation from FEMA, accelerating the build-out of emergency hospital construction. USACE issued 17 contracts to execute the construction of Alternate Care Facilities using the DPAS Rating. The issuance of this priority rating can be used to mitigate potential risks to contract performance.

2.3 Department of Energy

DOE is delegated authority through E.O. 13603 and E.O. 11790 to implement DPA authority for the production, conservation, use, control, distribution, and allocation of energy. DOE is prepared to use priority ratings in the event of an emergency impacting the energy sector, particularly in support of critical infrastructure protection and restoration for the private sector as well as state and local governments, if necessary. The Office of Electricity (including the Power Marketing Administrations) and the Office of Cybersecurity, Energy Security, and Emergency Response did not use DPA Title I authorities during CY 2020. To sustain preparedness, these elements continue to train on the potential use of DOE’s DPA authority in emergency response exercises conducted virtually in CY 2020, including Clear Path and Liberty Eclipse, with the

energy sector.¹⁷

The National Nuclear Security Administration (NNSA), in part through its management and operating (M&O) contractors operating national laboratories and production sites, utilizes DPAS ratings in contracts and subcontracts to support the DOD mission. DPAS ratings were used on contracts and subcontracts related to NNSA's mission to maintain the nation's nuclear weapons stockpile.

2.4 Department of Homeland Security

DHS is responsible for providing government-wide coordination and guidance for DPA plans and programs and for the overall federal effort to promote the security and resilience of the Nation's critical infrastructure. DHS is also responsible for determining which programs (other than military, space, and energy programs) are eligible to be supported using the DPA priorities and allocations authority. Within DHS, these DPA and critical infrastructure responsibilities are carried out by FEMA and CISA, respectively.

During CY20 DHS, through its delegation to FEMA, rated 73 contracts and 66 orders. Approximately 47% of these rated orders involved resources needed to house and feed disaster survivors and first responders, communications and information technology needs, and other logistical needs associated with disaster response and recovery efforts. FEMA also exercised priority rating and allocations authority delegated to DHS under Executive Order 13911 as a resource department for health and medical resources in support of COVID-19 response efforts. Specifically, FEMA placed one contract and six orders for more than 220 million respirators and issued an allocation order to restrict export of certain types of scarce and critical personal protective equipment (PPE) beginning April 10th. To administer this, a working group was formed with representatives from U.S. Customs and Border Protection, DOC, Department of State, and HHS to review and adjudicate flagged shipments. As of December 31st, 16 shipments were redirected into the domestic market, including 150,000 surgical gloves and 2.5 million respirators.

To promote the emergency preparedness of industry to reduce interruption of critical infrastructure and key resource operations, DHS/FEMA issued new and updated delegations of priority-rating authority within DHS, and developed new and improved guidance and procedures for use of rated orders to include the new COVID-specific EMPAS. FEMA prepared to test these delegations of authority, guidance, and procedures in exercises involving disaster scenarios, and although a cyberattack-themed National Level Exercise was pre-empted due to COVID-19 response, lessons learned in interagency preparations for this event were captured in subsequent analysis. FEMA held several preparatory agency exercises prior to the National Level Exercise (NLE) cancellation. These themes are captured in FEMA's NLE Lessons Learned report.

Additionally, DHS through FEMA:

- Conducted numerous outreach and training actions for DHS staff and contractors;
- Updated training courses published on Emergency Management Institute;

¹⁷ Clear Path was a discussion-based exercise focused on response and recovery following a catastrophic Wasatch Front earthquake in the State of Utah; Liberty Eclipse was a series of virtually conducted exercise events focused on a catastrophic cyber-attack on multiple critical infrastructure sectors, to include both electricity and natural gas subsectors

- Stood up a Joint DPA team for COVID-19 coordination, including representatives from HHS, DOD, and DHS Headquarters, to navigate additional COVID-specific administrative processes;
- Published EMPAS regulation as an addition to the Federal Priorities and Allocations System. Final publication occurred on January 8, 2021; and
- Established a voluntary agreement under DPA section 708 called “the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic”. This agreement allows communication within and across industries and federal government agencies to benefit the Nation’s response to COVID-19 or any future pandemic and its activities are covered in a separate report to Congress.

2.5 Department of Transportation

DOT is delegated DPA section 101 authority with respect to all forms of civil transportation. DOT’s DPA regulation, the Transportation Priorities and Allocations System (TPAS), clarifies the priorities and allocations authorities exercised by DOT under Title I of the DPA and sets forth the administrative procedures by which the Department exercises this authority. The DOT DPA program staff continues to educate other Departmental staff engaged in response and recovery activities to ensure they understand DPA and DOT’s DPA policies and procedures. The DOT DPA program staff focuses on ensuring that interagency documents appropriately characterize the use of DPA in general and, specifically, DOT’s authorities. DOT drafted a TPAS Authorization Request Form to help requestors provide DOT the information needed to decide on TPAS priority ratings.

2.6 Department of Health and Human Services

HHS is delegated authority by the President to require acceptance and priority performance of contracts and orders with respect to health resources through subsection 201(a) of Executive Order 13603. These health resources are identified in the Order as “drugs, biological products, medical devices, materials, facilities, health supplies, and equipment [including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies] required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.”

Section 201(a)(3) of Executive Order No. 13603 (77 FR 16651) delegates the President’s authority under section 101 of DPA to the Secretary of HHS to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense.

On July 17, 2015, an interim final rule established standards and procedures by which HHS may require that certain contracts or orders that promote the national defense be given priority over

other contracts or orders. This rule set new standards and procedures by which HHS may allocate materials, services, and facilities to promote the national defense. This rule implemented HHS's administration of priorities and allocations actions and established the Health Resources Priorities and Allocation System (HRPAS). HRPAS covers health resources pursuant to the authority under Section 101 of the DPA as delegated to HHS by Executive Order 13603. HHS is working to finalize the HRPAS and associated authorities in 2021.

To address the COVID-19 pandemic, former President Trump issued a series of E.O.s and Presidential Memorandums to ensure the United States had access to critical health and medical resources. President Trump also allowed the Secretary of Homeland Security to use the authority under section 101 of the Act to determine, in consultation with the heads of other executive departments and agencies as appropriate, the proper nationwide priorities and allocation of health and medical resources. This authority was further delegated to the FEMA Administrator. Furthermore, these directives identified specific scarce and critical health resources and prioritized controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the spread of COVID-19 within the United States.

- Executive Order 13909¹⁸ Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID-19
- Executive Order 13910¹⁹ Preventing Hoarding of Health and Medical Resources To Respond to the Spread of COVID-19
- Executive Order 13911²⁰ Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources To Respond to the Spread of COVID-19
- Presidential Memorandum on Order Under the Defense Production Act Regarding the Purchase of Ventilators²¹
- Presidential Memorandum on Order Under the Defense Production Act Regarding 3M Company²²

¹⁸ <https://www.federalregister.gov/documents/2020/03/23/2020-06161/prioritizing-and-allocating-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>

¹⁹ <https://www.federalregister.gov/documents/2020/03/26/2020-06478/preventing-hoarding-of-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>

²⁰ <https://www.federalregister.gov/documents/2020/04/01/2020-06969/delegating-additional-authority-under-the-defense-production-act-with-respect-to-health-and-medical>

²¹ <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-order-defense-production-act-regarding-purchase-ventilators/>

²² <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-order-defense-production-act-regarding-3m-company/>

- Presidential Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use²³

At the beginning of the COVID-19 response, HHS issued several priority ratings in response to E.O.s that directed priority ratings to specific companies for specified health resources, primarily N95 facemasks and ventilators. HHS also established a policy that all priority ratings would be at the “DO” level and only given to primary contracts with federal agencies. To coordinate and centralize use of the DPA, HHS and FEMA entered into a Memorandum of Agreement (MOA) designating FEMA as the lead federal agency to determine when and how to utilize these authorities. From April 2020 through September 2020, HHS and other agencies submitted priority rating requests for health and medical resources through the FEMA DPA office. These requests were made by program offices and companies with COVID-19-related contracts.

When OWS was initiated, HHS developed a streamlined approval process that was internal to HHS and approved by the HHS Secretary, with DOD concurrence and OWS leadership agreement. On August 13, 2020, DOC authorized HHS to use the “DO-H5” priority rating on OWS contracts or orders to support private domestic production through August 31, 2022. OWS projects are designed to ramp up and expand domestic production capacity of critical health and medical resources in response to COVID-19, and are funded through the Coronavirus Aid, Relief, and Economic Security (CARES) Act and/or other HHS funding sources.

During the summer of 2020, HHS and the Office of the Assistant Secretary for Preparedness and Response (ASPR) established the DPA-Emergency Response Authorities (DPA-ERA) Branch to centralize and coordinate DPA activities across HHS and with the appropriate interagency stakeholders, including OWS. In September 2020, the MOA between HHS and FEMA was terminated, and authority reverted to HHS for COVID-19 DPA coordination efforts.

Since becoming the lead agency for managing all COVID-19 DPA efforts, once a determination is made that a priority rating for a health or medical resource is needed, the information is submitted to the ASPR DPA-ERA Branch, reviewed by the appropriate SMEs, and approved by the Secretary of HHS. Currently, only the HHS Secretary can authorize DPA priorities as that authority has not been delegated to anyone else.

HHS exercised DPA Title I authorities under HRPAS to prioritize contracts 34 times since the beginning of the COVID-19 national response. Health resources that have been identified as essential to respond to the COVID-19 pandemic include PPE, ventilators, and medical countermeasures, such as diagnostics, therapeutics, and vaccines.

A specific breakdown of HRPAS priority rated contracts by health resource type is below.

- 10 Ventilator Contracts;

²³ <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-allocating-certain-scarce-threatened-health-medical-resources-domestic-use/>

- 9 PPE Contracts (primarily N95s);
- 3 Needles/Syringes Contracts;
- 5 COVID-19 Vaccine Contracts;
- 5 COVID-19 Therapeutics Contracts; and
- 2 COVID-19 Diagnostics Contracts (includes testing kits).

A priority rating was necessary to provide the quantities and qualities of these health resources within a specified time period for delivery. These rated orders are filled first when there are commercial demands and government demands for the same product, or component of a product.

Additionally, HHS has priority rated five manufacturing expansion contracts under the DPAS. Some of these contracts required Title I priority ratings in order to execute the industrial expansion activities.

On March 25, 2020, the Secretary of HHS used its delegated authority under section 102 of the DPA to designate 15 categories of health and medical resources as scarce or threatened materials. As a result of this designation, it is unlawful to accumulate these materials (1) in excess of the reasonable demands of business, personal, or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices. These items included N-95 masks and other respirators, ventilators, drugs containing chloroquine phosphate or hydroxychloroquine, sterilization services for medical devices, disinfecting devices and products, medical gowns and apparel, surgical masks and face shields, and surgical and other gloves. This designation list has been amended to remove the reference to hydroxychloroquine and will continue to be updated appropriately as HHS responds to the ongoing pandemic.

In April 2020, HHS also worked with the Department of Justice and US Customs and Border Protection to prohibit a shipment of N95 masks from leaving the country by procuring them and distributing them to New York, New Jersey, and nearby areas which were in desperate need of PPE.

Appendix A: Acronyms

AOC	Architect of the Capitol
ASPR	HHS Office of the Assistant Secretary for Preparedness and Response
CARES	Coronavirus Aid, Relief, and Economic Security Act
CISA	Cybersecurity and Infrastructure Security Agency
COVID-19	Coronavirus Disease 2019
CY	Calendar Year
DHS	United States Department of Homeland Security
DIB	Defense Industrial Base
DOC	United States Department of Commerce
DOC/BIS	United States Department of Commerce/Bureau of Industry and Security
DOD	United States Department of Defense
DOE	United States Department of Energy
DOT	United States Department of Transportation
DPA	Defense Production Act of 1950, as amended
DPA-ERA	HHS DPA-Emergency Response Authorities Branch
DPAS	Defense Priorities and Allocations System
EMPAS	Emergency Management Priorities and Allocations System
EO	Executive Order
ETL	Explosive Technical Laboratory
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FPAS	Federal Priorities and Allocations System
FY	Fiscal Year
GSA	General Services Administration
HHS	United States Department of Health and Human Services
HRPAS	Health Resources Priorities and Allocations System
IT	Information Technology
JATF	Joint Acquisition Task Force
MOA	Memorandum of Agreement
M&O	Management and Operations

NLE	National Level Exercise
NNSA	National Nuclear Security Administration
OWS	Operation Warp Speed
PPD	Presidential Policy Directive
PPE	Personal Protective Equipment
SPA	Special Priorities Assistance
SSA	Sector-Specific Agency
SRMA	Sector Risk Management Agency
TEDAC	Terrorist Explosive Device Analytical Center
TI	United States Decennial Census 2020 Technical Integrator Program
TPAS	Transportation Priorities and Allocations System
USACE	United States Army Corps of Engineers
USDA	United States Department of Agriculture
VA	United States Department of Veterans Affairs