

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.

Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, et seq.) (“Stafford Act”), and Executive Order 12919 (59 FR 29525, 3 CFR, 1994 Comp. 901); Executive Order 12656 (53 FR 226, 3 CFR, 1988 Comp. 585); and Executive Order 13286 (68 FR 10619, 3 CFR 2004 Comp. 166).

B. Purpose.

This document delegates certain authority 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).

C. Rating Authority.

The Secretary is delegated authority under the DPAS to:

(1) Place DO priority rated contracts and orders in support of (i) Department of Homeland Security (“DHS”) programs and (ii) state, local, and tribal 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, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities (i.e., approved programs). In placing these rated orders, DHS must use the appropriate program identification symbol listed in Attachment 1 to this delegation.

(2) 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 in support of programs determined by the Secretary as necessary or appropriate to promote the national defense (i.e., approved programs), with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

(3) Endorse, and forward to DOC for appropriate action, the requests of owners or operators of critical infrastructure to place DO priority rated contracts and orders in support of critical infrastructure protection or restoration related-programs determined by the Secretary as necessary or appropriate to promote the national defense, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities. Such requests should be sponsored to DHS by the agency delegated resource authority in Section 201(a) of Executive Order 12919 or in Executive Order 12472.

The Defense Production Act's definition of national defense includes emergency preparedness activities conducted pursuant to Title VI of the Stafford Act and critical infrastructure protection and restoration. Emergency preparedness activities and measures include Federal, state, local, and tribal government programs for the continuity of government and continuity of operations. 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.

The use of this delegated authority to support emergency preparedness activities or measures described in Title VI of the Stafford Act requires a finding that the Secretary has found that the activity or measure is in response to, or in anticipation of, a hazard as defined in Section 602(a)(1) of the Stafford Act.

D. Special Priorities Assistance.

The Secretary may sponsor to DOC requests by persons for special priorities assistance 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.

E. 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.

F. Compliance, Audits, and Training.

In exercising this delegation, the Secretary shall ensure that DHS, DHS contractor, associated agency, and critical infrastructure personnel 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 DHS's use of this delegated authority.
- (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 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.
- (4) In coordination with DOC, the Secretary shall conduct a continuing training program to ensure that DHS, DHS contractor, associated agency, and critical infrastructure personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

G. 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 12919 or any other authority. This delegated authority shall not be used to support the procurement of:

(1) Any items that (a) are commonly available in commercial markets for general consumption; (b) do not require major modification 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; or

(2) Any items to be used primarily for administrative purposes, such as for personnel or financial management.

H. 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 issued by DOC to the Federal Emergency Management Agency relating to these authorities.

Dated: March 26, 2004

Matthew S. Borman

Matthew S. Borman
Acting Assistant Secretary for Export Administration

Attachment 1

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

SCHEDULE 1 TO PART 700

DEPARTMENT OF HOMELAND SECURITY APPROVED PROGRAMS

DOC will amend Schedule 1 to 15 CFR Part 700 to replace the current “N1 emergency preparedness activities” approved Federal Emergency Management Agency program with the following list of Department of Homeland Security approved programs.

Program
Identification

Symbol

Approved program

Delegate agency

Homeland security
programs:

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

Note: The U.S. Coast Guard is delegated priorities and allocations authority under DPAS Delegation 1 to the Department of Defense from the U.S. Navy and thus is not eligible for DPAS support under this Delegation.

The signature of a DHS official below is deemed to be a certification that in establishing these approved programs (N1-N8), DHS is in compliance with the requirements of Section C of this delegation.

Concurrence

For the Department of Homeland Security:

A handwritten signature in black ink, appearing to read "R. Paulison". The signature is written in a cursive style with a large initial "R".

R. David Paulison
Acting Director
Federal Emergency Management Agency

Dated: 6/6/06