



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

Fiscal Year 2009 Report to Congress

May 15, 2009



Homeland
Security

Federal Emergency Management Agency

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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." 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 that includes the Departments of Agriculture, Commerce, Defense, Energy, and Transportation.

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

The Honorable Christopher J. Dodd
Chairman, Senate Banking, Housing, and Urban Affairs Committee

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

The Honorable Barney Frank
Chairman, House Financial Services Committee

The Honorable Spencer Bachus
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

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

The Honorable Peter T. King
Ranking Member, House Homeland Security Committee

Inquiries relating to this report may be directed to the Department of Homeland Security's Office of Legislative Affairs at (202) 447-5890.

Sincerely,



Chant Wiggins
Assistant Secretary
Office of Legislative Affairs

Executive Summary

This is the second 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 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), and Transportation (DOT).

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, Health and Human Services, 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).

E.O. 12919 also directs DOC to administer the Defense Priorities and Allocations System (DPAS), which provides guidance and procedures for the acceptance and preferential performance of contracts or orders for resources within DOC's jurisdiction, pursuant to E.O. 12919's delegation to DOC. The DPAS is used by other Federal departments and agencies, foreign governments, and industry, when authorized by DOC, to ensure timely delivery of industrial resources needed to support approved programs.

The DPA's definition of "national defense" was amended in 2003 to include the term "critical infrastructure protection and restoration." Since that time, the Executive Branch has taken a number of actions involving section 101 authorities that include: delegations of DPA authorities and development of DPA guidance documents; plans to use DPA authorities; and applications of DPA authorities. During 2008, additional actions were taken by several Federal Departments to update DPA delegations of authority and guidance and to apply the DPA priorities authority in support of critical infrastructure protection and restoration activities. The priorities authority was used to support: (1) timely equipment upgrades in the Federal Emergency Management Agency's (FEMA's) National Response Coordination Center; (2) restoration of the Federal Court House in Cedar Rapids, Iowa (following extensive flooding in the Midwest); (3) improvements to the Greater New Orleans Hurricane and Storm Damage Risk Reduction System; (4) equipment upgrades for the FEMA National Radio System; and (5) responses to disastrous flooding in the Midwest and Hurricanes Gustav and Ike.

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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 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 infrastructure and key resource (CIKR)¹ operations during an act of terrorism, natural catastrophe, or other similar national emergency.² This report focuses on planning to protect and restore CIKR and implementation of the DPA Section 101 authority for these purposes.

This report was prepared by the Department of Homeland Security (DHS), in cooperation with the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Energy (DOE), 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.

Development of this report involved: (1) conducting interagency meetings to provide direction and coordination for the drafting of each department's input; (2) drafting of input by personnel engaged in DPA programs and CIKR protection and restoration activities; (3) integrating inputs into a report; and (4) reviewing and approving the consolidated report by departments whose actions are described in this report.

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 in the forefront of ensuring 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.

¹ 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."

² 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."

Policies for CIKR protection and preparedness are established through a number of statutes, executive orders, Presidential directives, and national strategies. Chief among these are: the Homeland Security Act of 2002; Homeland Security Presidential Directive (HSPD) 7 (“Critical Infrastructure Identification, Prioritization, and Protection”); the National Strategy for Homeland Security of 2007; the National Strategy for the Physical Protection of Critical Infrastructure and Key Assets; the National Strategy for Securing Cyberspace; and the Defense Production Act.

HSPD-7 charges the Secretary of Homeland Security with the responsibility for coordinating the national effort to enhance CIKR protection. The directive also designates Sector-Specific Agencies (SSAs) with responsibility for coordinating planning, preparedness, and protection activities within each of 17 identified CIKR sectors, and gives the Secretary the authority to designate additional sectors.³ This approach provides the structure needed to address the unique characteristics and operating models of each of the sectors.

As called for in HSPD-7, DHS developed an overarching framework, outlined in the National Infrastructure Protection Plan (NIPP) and the associated Sector-Specific Plans (SSPs), to lead and coordinate the risk-based approach and sector partnership model used by government and private sector partners to identify, assess, and prioritize the implementation of risk-reduction and protective measures.

³ The Secretary exercised this authority in March 2008 to add “Critical Manufacturing” as the 18th CIKR sector.

The 18 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	Agriculture and Food
Department of Health and Human Services ⁵	
Department of Defense	Defense Industrial Base
Department of Energy ⁶	Energy
Department of Health and Human Services	Health Care 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 Information Technology Telecommunications Postal and Shipping Transportation Systems ⁸ Government Facilities
<i>Office of Cyber Security and Telecommunications</i>	
<i>Transportation Security Administration</i>	
<i>Transportation Security Administration/U.S. Coast Guard⁷</i>	
<i>Immigration and Customs Enforcement/Federal Protective Service</i>	

1.2.2. Defense Production Act

The Defense Production Act provides a number of important authorities to expedite and expand the supply of critical resources from the U.S. industrial base to support the national defense. DPA provisions are focused primarily on DOD acquisition needs and support for military conflicts overseas. Except for several significant changes to the DPA definition of “national defense,” which now includes “emergency preparedness activities” conducted pursuant to title VI of the Stafford Act and “critical infrastructure protection and restoration,” virtually no other changes have been made to DPA Declaration of Policy or authorities to address homeland security missions, including protection of CIKR operations.

Subsection 1002(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 specifically refers to the authorities in DPA Subsections 101(a) and 101(c). These Subsections

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

⁷ The U.S. Coast Guard is the SSA for the maritime transportation mode.

⁸ 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.

authorize 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 or to maximize domestic energy supplies; 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 or to maximize domestic energy supplies.

The President's priorities and allocations authorities under DPA subsection 101(a) are delegated to the following department heads in subsection 201(a) of E.O. 12919 (National Defense Industrial Resources Preparedness):

- 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.

The Federal Acquisition Regulation (FAR) was amended on April 22, 2008, (73 FR 21785) to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and to reflect the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce outlined in 15 CFR Part 700. FAR Subpart 2.101 revised the definition of "national defense" to include a reference to the DPAS definition, which includes critical infrastructure protection and restoration.

Section 202 of E.O. 12919 provides that section 201(a) authority 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 and restoration of most types of critical infrastructure must first be determined by DHS to be “necessary or appropriate to promote the national defense,” although DOD or DOE could approve defense or energy-related uses, as appropriate.

1.2.3. Defense Priorities and Allocations System

DPA authority to issue priority ratings to support the timely delivery of industrial resources is implemented through the DPAS regulation (15 CFR Part 700). This regulation is administered by DOC, in consultation with the heads of the departments and agencies specified in Subsection 201(a) of E.O. 12919, and is used, as authorized by DOC, by other Federal departments and agencies and industry to support programs necessary or appropriate to promote the national defense, including critical infrastructure protection and restoration. The key elements of the DPAS regulation are mandatory acceptance of rated orders, preferential scheduling of rated orders to meet delivery requirements, and extension of priority ratings to lower level suppliers and subcontractors.

DOC has delegated specific priority rating authority with respect to industrial resources to DOD, DOE, the General Services Administration (GSA), and DHS. DOD implements its priority rating authority as a standard clause in most of its contracts and orders for industrial resources. Use of the priority rating authority by the other three agencies is limited. DOE and GSA use their authority, primarily, in support of DOD-approved programs. DHS uses its authority primarily in support of emergency preparedness and critical infrastructure protection and restoration activities.

Except in cases when a special agreement has been made between DOC and the department with applicable DPA priorities and allocations authority, the DPAS cannot be used to prioritize food, energy, health, water, and civil transportation resources. These resources are under the jurisdictions of USDA, DOE, the Department of Health and Human Services, DOD, and DOT, respectively, in accordance with E.O. 12919.

1.3. Report Organization

The rest of this report is organized into two chapters. Chapter 2 provides a brief description of several major emergency preparedness planning efforts, both Government-wide and within several Federal departments, to address critical infrastructure protection and restoration. Chapter 3 summarizes Federal actions to implement the DPA priorities and allocations authority in support of CIKR operations.

2. Planning for CIKR Protection and Restoration

This chapter highlights a number of key elements of emergency preparedness planning efforts, both Government-wide and within several Federal departments, to address CIKR protection and restoration.

2.1. Emergency Preparedness Planning

DHS is responsible for coordinating most interagency emergency preparedness planning efforts and CIKR protection programs, including the National Preparedness Guidelines, the National Response Framework (NRF), and the NIPP. All of these planning documents address reducing interruptions of CIKR operations under emergency conditions.

The National Planning Scenarios are among the key elements of the National Preparedness Guidelines⁹. The scenarios form the basis for coordinated Federal planning, training, exercises, and grant investments needed to prepare for emergencies of all types. HSPD-8 Annex I commits the Federal Government to complete families of interagency and agency-specific contingency plans for these 15 National Planning Scenarios. The strategic plans and concept plans for these scenarios are currently being developed. Each of the plans will mention DPA authorities in the base plan and addresses these authorities, including the Section 101 authorities, in more detail in the "Administration and Resources" section.

The NRF¹⁰ provides a guide to all-hazards incident response. The Critical Infrastructure and Key Resource Support Annex to the Framework highlights the importance of the DPA in providing specific authority to expedite deliveries and strengthen production capabilities for CIKR protection and restoration activities.

Homeland Security Presidential Directive (HSPD) 7 is implemented through the NIPP¹¹. The NIPP describes the risk management framework used by DHS and other Federal agencies to identify, assess, and prioritize risks to CIKR. It also describes the sector partnership model that enables these government agencies to work effectively with the private sector to manage CIKR risks. The NIPP partnership framework allows DHS to provide national leadership and cross-sector oversight, while the Federal Sector-Specific Agencies manage specific CIKR protection activities in their sectors. Using this framework, DHS, the SSAs, and other government and private sector partners are implementing consistent processes to:

- Improve CIKR preparedness and protective measures;
- Develop and reinforce plans through training and exercises;
- Use DPA authorities in support of CIKR protection and restoration activities; and

⁹ See http://www.dhs.gov/xprepresp/publications/gc_1189788256647.shtm.

¹⁰ See <http://www.fema.gov/emergency/nrf/mainindex.htm>.

¹¹ See http://www.dhs.gov/xprevprot/programs/editorial_0827.shtm.

- Strengthen capabilities to develop and share threat, protective measure, and other relevant information and analyses.

2.2. Department of Homeland Security

DHS/IP provides leadership and coordination for the national effort to reduce the risk to the Nation's CIKR posed by acts of terrorism and to strengthen national preparedness, timely response, and rapid recovery in the event of an attack, natural disaster, or other emergency. DHS/IP utilizes various authorities to implement its mission and to foster private sector preparedness. The Defense Production Act offers important authorities in support of the protection and preparedness missions. DHS/IP has taken aggressive measures to understand and incorporate DPA provisions in CIKR planning efforts, as well as in its training and exercises.

DHS/IP, in collaboration with private sector and government security partners, has taken preparatory actions to support use of DPA authorities to reduce interruptions in CIKR operations. These actions include:

- Working with FEMA to develop and institute procedures to enable use of the DPA authorities, when needed and appropriate, to reduce interruptions of CIKR operations;
- Incorporating the DPA as a key authority described in the NIPP, the Sector Specific Plans (SSPs), and the CIKR Support Annex to the NRF;
- Developing a process to coordinate and address requests for assistance from private sector CIKR owners and operators that recognizes the use of the DPA as a potential tool to address incident-related disruptions; and
- Conducting workshops, technical assistance sessions, and briefings with the Partnership for Critical Infrastructure Security, Sector Coordinating Councils, and other private sector partners to raise awareness of the process for requesting assistance and the applicability of the DPA.

2.3. Department of Defense

HSPD-7 assigns two broad responsibilities to DOD associated with limiting and managing risks to CIKR operations. DOD is designated as the Sector-Specific Agency for the Defense Industrial Base (DIB), and the United States Army Corps of Engineers (USACE) plays a significant role in the Water and Dams sectors under the Sector-Specific Agency lead of the Environmental Protection Agency and Department of Homeland Security, respectively. USACE is also the lead for Emergency Support Function (ESF) #3 (Public Works and Engineering) under the NRF.

The Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD (HD&ASA)) serves as the principal civilian advisor to the Secretary of Defense for the identification, prioritization, and protection of DOD's defense critical infrastructure. In support of the ASD (HD & ASA), the Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) submits the DIB Critical Asset List (CAL) (classified SECRET) to

the ASD (HD & ASA) annually. The USD (AT&L) prepares the DIB CAL by identifying critical defense industrial base facilities that warrant increased attention from all hazards. The most recent DIB CAL, published in March 2009, prioritizes almost 400 domestic and foreign facilities. Facilities selected are critical prime, sub-tier and sole-source suppliers, and those that directly support current and projected operational warfighting requirements. The Defense Contract Management Agency, as the sector lead agency for the DIB, identifies and prioritizes DIB assets and executes day-to-day sector management activities.

Under the security partnership framework established in the NIPP, three principal coordinating bodies within the DIB sector have been established. The DIB Government Coordinating Council (GCC) provides effective coordination of sector security strategies and activities, policy, and communications across government and coordinates with the other national sectors as required. The DIB Sector Coordinating Council (SCC), the private sector counterpart to the GCC, is an independent, self-governed body organized by the owners and operators of the DIB. It provides a recurring forum to enable private sector owners and operators to coordinate among themselves on sector initiatives, including response and recovery and information sharing. The Critical Infrastructure Partnership Advisory Council (CIPAC) was established as the framework to enable private sector owners and operators to engage DOD, DHS, and other Federal departments and agencies on homeland security issues. The CIPAC is a Federal Advisory Committee Act exempt body, pursuant to section 871 of the Homeland Security Act.

DOD has developed the DIB Sector Assurance Plan and DIB SSP. The DIB Sector Assurance Plan outlines an approach that focuses on steps to identify a list of critical assets that, if damaged or destroyed, will result in unacceptable consequences. It also sets forth the process used to prioritize those critical assets based on a risk assessment process; perform vulnerability assessments on high-priority critical assets; and encourage industry actions to remediate or mitigate adverse effects found during these assessments. The DIB SSP outlines DOD's approach to executing its sector-specific responsibilities, follows guidance established by DHS, and complements other DOD critical infrastructure policy.

USACE has established the Critical Infrastructure Security Program (CISP) to address the security needs under potential terrorist threat scenarios of all the USACE infrastructures, including administration buildings and laboratory facilities. To date, USACE has not employed the priorities and allocations authority in support of CISP. However, USACE is currently using this authority in support of the New Orleans Hurricane and Storm Damage Risk Reduction System (HSDRRS) program. (See section 3.3.3 of this report.)

2.4. Department of Energy

The Department of Energy is the lead federal agency for energy resources. In coordination with DHS, DOE is tasked with the responsibility of protecting U.S. energy infrastructure, establishing policies and procedures regarding preparedness for and prevention of interruptions in U.S. energy supplies caused by natural and man-caused disasters, and promoting effective response and recovery actions to mitigate disruptions and shortfalls of energy supplies caused by such disasters.

Within DOE, the Office of Electricity Delivery and Energy Reliability (DOE-OE) is responsible for safeguarding critical infrastructure and key resources in the energy sector. This office leads the effort to ensure a secure and reliable flow of energy to America's homes, businesses, industries, and critical infrastructures (e.g., telecommunications, transportation, water supply, banking and finance, manufacturing, education and public health systems). DOE-OE's role includes preparing for and responding to energy emergencies resulting from natural or man-made disasters. DOE-OE works closely with DHS and in partnership with industry and state and local governments to identify energy infrastructure vulnerabilities and to develop and implement strategies to reduce these vulnerabilities and to enable rapid restoration of capabilities disrupted by disasters. During the previous Administration, DOE's energy assurance activities were conducted in direct support of the President's National Strategy for Homeland Security and the President's National Energy Policy.

DOE-OE has lead responsibilities for ESF #12 of the National Response Framework when activated by DHS for incidents requiring a coordinated Federal Response. The purpose of ESF #12 is to facilitate the restoration of damaged energy systems and components. ESF #12 is an integral part of the larger DOE responsibility of maintaining continuous and reliable energy supplies for the United States through preventive measures and restoration and recovery actions. DOE-OE provides expertise, coordination with energy producer and distributors, and situation reports. It monitors the energy infrastructure and shares information with federal, state, local, and industry officials, as well as the public. In coordination with DHS (including FEMA and the Coast Guard) and state, local, and tribal governments, DOE-OE plans and supports implementation of actions to restore energy resources during response and recovery operations. DOE-OE also works very closely with the Minerals Management Service, United States Department of the Interior, the Environmental Protection Agency, and the Department of Transportation to ensure that energy fuels are available to first responders and the public.

Within DOE-OE, the Infrastructure Security and Energy Restoration Division (ISER) leads the Federal Government's effort to ensure a robust, secure, and reliable energy infrastructure. This division supports Homeland Security Presidential Directives 7 and 8, which require DOE to identify and prioritize critical energy assets and assist state and local governments with disruption preparation and response. ISER works with DHS, the Federal Energy Regulatory Commission, and other national, regional, state, and local government and commercial organizations to:

- Support the national critical infrastructure protection program;
- Analyze infrastructure vulnerabilities and recommend preventive measures;
- Help other agencies prepare for and respond to energy emergencies and minimize the consequences of an emergency;
- Develop, implement, and maintain a national energy cyber security program; and
- Conduct emergency energy operations during a declared emergency or National Special Security Event in accordance with the National Response Framework.

ISER conducted emergency energy operations in response to a range of major disasters during 2008, including the flooding in the Midwest, the wildfires in California, and several hurricanes. For example, during the three-week period from late August to mid September, when three successive hurricanes – Gustav, Hanna, and Ike – made landfall in the United States, ISER provided ESF #12 support in five FEMA Regions at the request of Federal Coordinating Officers in these regions. By the end of Hurricane Ike, DOE had deployed fifty-nine responders in FEMA Regions II, III, IV, V and VI, where they successfully supported FEMA's mission to help disaster victims and facilitate power restoration. The relationships that the DOE Regional Coordinators had established in the affected regions, in combination with the work that ISER had done to establish relationships in the energy sectors, contributed to the energy sector's disaster preparedness in these regions and helped ensure timely restoration of energy infrastructure operations that had been disrupted by the hurricanes.

2.5. Department of Transportation

E.O. 12919 assigns the Department of Transportation the lead role for implementing the Defense Production Act in the transportation sector. This allows DOT to work with all elements of the government, including DHS, to provide appropriate implementation of the DPA while balancing the ongoing transportation needs of the nation. In addition to DOT, several elements of the Department of Homeland Security interact with transportation entities. Under the NIPP, DHS, via the Transportation Security Administration, is the government coordinator for the transportation sector. TSA has been designated as the lead for the transportation sector for security issues (and collaborates with DOD on security issues) and transportation is one of the critical infrastructures coordinated by the DHS Infrastructure Protection Division. FEMA provides transportation logistics associated with a Presidential-declared disaster. The two Departments work together closely, with ongoing technical programs and quarterly coordination meetings at the policy and Secretarial levels.

3. 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.

Currently, DOC administers the only priorities and allocations system that is being used actively to support approved national defense programs, including critical infrastructure protection and restoration. USDA, DOE, and DOT have priorities and allocations systems, if needed. USDA is revising its system. This chapter describes recent and ongoing actions in all of these areas.

3.1. Department of Agriculture

USDA is delegated DPA Section 101 authority with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer. These resources are outside the jurisdiction of the DPAS regulation. The DPA, the Stafford Act, E.O. 12656 (Assignment of Emergency Preparedness Responsibilities), 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 agricultural production during times of national emergency. USDA previously had established six Defense Food Orders (DFOs) for publication in the Code of Emergency Federal Regulations. However, these DFOs are outdated and no longer fulfill emergency response and recovery requirements. To address this issue and to support national defense programs, including domestic emergency preparedness and CIKR protection and restoration and to fulfill the requirements of E.O. 12919, USDA is in the process of developing plans and regulations to establish and implement an Agriculture Priorities and Allocation System (APAS) pursuant to its DPA Section 101 authority. The APAS will support continuation of agricultural production by ensuring that agricultural producers, processors, distributors, and wholesalers receive preferential scheduling for items and processes necessary to maintain their agricultural operations during times of a declared national emergency.

Under an APAS, USDA would issue priority orders to private sector processors, distributors, and wholesalers as a means to redirect agricultural commodities to areas of hardship. By assigning priority-rated orders, the Secretary of Agriculture would direct a supplier to fill orders in the priority in which they are rated. Rated orders would take precedence over nonrated orders normally supplied by an individual or business. The purpose of this system would be to assist the free market in meeting USDA's needs in response to an emergency. The Secretary of Agriculture has assigned USDA's Farm Service Agency responsibility for preparing and implementing priorities and allocation requirements and for handling food claims received pursuant to DPA provisions.

Regulations for establishing and implementing the APAS are proceeding, and an interim rule is expected to be available for publication in the Federal Register in Calendar Year 2009. In 2008,

USDA and DOC also concluded an arrangement that authorized FEMA to place priority ratings, in accordance with the DPAS, on orders for meals ready to eat and similar items to support FEMA's emergency preparedness activities during the 2008 hurricane season. FEMA requested such assistance in order to replenish its diminished stocks to support hurricane relief operations. Also, USDA has a memorandum of understanding in place with DOC separating duties and assignments for priorities and allocations in areas in which authorities may overlap. USDA also cooperates with the DOE to develop an understanding for governing biofuels commodities during times of a declared emergency.

3.2. Department of Commerce

DOC is delegated authority, through E.O. 12919, to implement the DPA priorities and allocations provisions for industrial resources.¹² DOC's Bureau of Industry and Security (DOC/BIS) administers this authority through the DPAS regulation. The purpose of the DPAS is to ensure the timely availability of industrial resources to meet current national defense and emergency preparedness program requirements and to provide an operating system to support rapid industrial response in a national emergency. 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 GSA, to place, in accordance with the DPAS regulation and under the authority of the Defense Production Act and E.O. 12919, 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 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 as "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 needed to enhance 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 when 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 to support recovery from industrial accidents that have adversely impacted production capabilities.

In 2008, DOC/BIS took action through the DPAS, in cooperation with DHS/FEMA, to support the protection, restoration, and recovery efforts of owner/operators of critical infrastructure. Examples are provided in section 3.7 of this report.

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).

3.3. Department of Defense

3.3.1. The Defense Priorities and Allocations System

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.

3.3.2. Priority Allocation of Industrial Resource

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 Deputy Under Secretary of Defense for Industrial Policy usually issues a request for SPA to the Department of Commerce to allocate materials or expedite deliveries of defense items, in accordance with PAIR decisions.

3.3.3. Special Priorities Assistance

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 Deputy Under Secretary of Defense for Industrial Policy is authorized to endorse the request for SPA and forward it to DOC for action. The table below lists examples of SPA requests submitted to DOC during calendar year 2008.

TABLE 3-1. Examples of DPAS Special Priorities Assistance Cases in 2008

DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM/ SPECIAL PRIORITIES ASSISTANCE CASES – 2008			
Date(s)	Item	Assistance for	Summary
02/07, 08/08	Machine repairs for armor production	U.S. Steel Mill	Provided rating authority to expedite repair and resume production
07/08	Counter Radio Controlled Improvised Explosive Device	Joint IED Defeat Organization	Prepared justification and obtained SECDEF approval to extend DX authority
06/07, 09/07	Mine Resistant Ambush Protected Vehicle & Route Clearance Vehicle(s)	Joint MRAP program, Army programs, & UK program	Engaged multiple industries to resolve capacity constraints.
09/08	New Orleans Levees	U.S. Army Corps of Engineers	Prepared priority rating justification and secured DHS sponsorship and DOC approval
10/08	Intelligence, Surveillance, Reconnaissance Systems (ISR)	ISR Task Force	Engaged multiple industries to resolve capacity constraints.

Source: ODUSD (IP)

The SPA request involving New Orleans levees is particularly noteworthy in the context of this report. It involved the \$14.6-billion New Orleans Hurricane and Storm Damage Risk Reduction System (HSDRRS) program. USACE submitted a SPA request for the HSDRRS program to enable completion by 2011. Civil works projects of this magnitude typically require eight to ten years to complete. The SPA request was needed, because DPA priorities and allocations authority may not be used in support of a civilian program, unless DHS determines that the program is necessary or appropriate to support the national defense, which is defined to include emergency preparedness activities conducted pursuant to title VI of the Stafford Act and critical infrastructure protection and restoration. In response to the SPA request, DHS provided the

determination and DOC authorized use of the DPAS in support of the HSDRRS program on November 5, 2008.

3.3.4. The National Critical Infrastructure Protection Program

DOD does not normally employ priorities and allocations authorities in support of its Critical Infrastructure Protection Program. However, if a defense contractor is faced with production constraints when attempting to improve physical security or to rebuild after an incident, the DOD can authorize that contractor to establish priority ratings for the relevant contracts and improve delivery.

3.4. Department of Energy

3.4.1. DOE Authorities and Procedures Under DPA Subsections 101(a) and 101(c)

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

- 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 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 it is necessary to use the authority provided by subsection 101(c)(1).
- 10 CFR 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 CFR 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.

- 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.

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

Use of the priority authority was considered by DOE to support restoration of electric service following Hurricane Ike. Through DOE discussions with the suppliers of needed components, however, the timely procurement of needed materials was achieved without resorting to priority-rated orders. It is rarely 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. There was no need to invoke the priority authority during 2008 to support timely restoration of energy infrastructure operations.

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.

3.4.3. Use of other DPA Authorities to Reduce Potential Interruptions in Domestic Energy Operations

DOE is currently partnering with DOD in a DPA Title III project to establish large-volume, high-quality, domestic production capacity for a second-generation high temperature superconductor (HTS) coated conductor. The conductor, based on yttrium barium copper oxide (YBCO) material, is a higher-performance, lower-cost substitute for first-generation HTS wire. While the driving force behind this project is potential applications in defense systems, resulting improvements in material quality and a lower material cost will stimulate use of the YBCO coated conductor in electric power applications, such as transformers, transmission cables, motors, fault current limiters, and generators. The project is establishing two domestic sources of YBCO coated conductor and is projected to accelerate use of this second-generation HTS material in military and electric utility applications by five to seven years.

The YBCO project is just one element of DOE’s efforts to partner with industry to develop cost-effective transmission solutions, including advanced composite conductors, high temperature superconductors, and wide area measurement systems. High temperature superconductors have the potential to play an important role in the future of our nation’s electricity grid.

In addition to the YBCO project, DOE is exploring other potential applications for DPA Title III authorities to improve the reliability and efficiency of domestic energy operations and to improve capabilities of the domestic industrial base to support rapid restoration of energy infrastructure capabilities that have been disrupted by natural or man-caused emergencies.

DOE is also exploring possible uses for voluntary agreements to support energy sector emergency preparedness and response activities. Voluntary agreements could allow energy

infrastructure businesses to develop and implement coordinated plans for emergency actions to mitigate disruptions caused by catastrophic events.

3.4.4. Summary

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, and DOD, DOE has been planning and exercising possible use of these authorities to address emergency conditions impacting energy infrastructure operations. 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 2008 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.

3.5. Department of Homeland Security

In December 2005, DHS/FEMA requested that DOC update DPAS Delegation 4 to cover the spectrum of DHS programs eligible for DPAS support. In March 2006, the revised delegation was issued by DOC/BIS. It authorizes and provides a procedure for handling requests from owners and operators of critical infrastructure to place priority rated contracts and orders for industrial resources in support of critical infrastructure protection and restoration activities. Delegation 4 also provides procedures for use of priority ratings in support of: (1) approved DHS programs; (2) state, local and tribal government programs that involve disaster preparedness, mitigation, response, and recovery activities; and (3) programs of other Federal department and agencies that involve essential civilian needs determined by DHS to be necessary or appropriate to promote the national defense. The previous DPAS Delegation 4 had been issued to FEMA in 1998 and did not account for the broadened DPA definition of “national defense” to include “critical infrastructure protection and restoration.”

In June 2006, the FEMA Administrator, acting under authority delegated by the Secretary of Homeland Security, determined that eight categories of homeland security programs, including critical infrastructure protection and restoration, are approved for DPAS support. These eight approved program categories are:

- Federal emergency preparedness, mitigation, response, and recovery
- State, local, tribal government emergency preparedness, mitigation, response, and recovery
- Intelligence and warning systems
- Border and transportation security

- Domestic counter-terrorism, including law enforcement
- Chemical, biological, radiological, and nuclear countermeasures
- Critical infrastructure protection and restoration
- Miscellaneous.

DHS is in the process of establishing policies and procedures to implement its priorities and allocations authorities fully. This process has included:

- Analyzing DOD's use of the DPAS for lessons learned;
- Publishing a FEMA DPAS Directive and FEMA DPAS Manual;
- Developing a Web-based DPAS training course (in development);
- Developing processes and procedures to ensure coordination with DHS/IP to conduct analysis and validate CIKR-related requests;
- Developing a DHS DPA/DPAS website (in development); and
- Preparing a new regulation on the use of DPA priorities and allocations authorities on essential civilian needs (in coordination).

3.6. Department of Transportation

DOT is delegated DPA Section 101 authority with respect to all forms of civil transportation. Civil transportation is not covered by the DPAS, but the DPAS has been used in the past to expedite the delivery of industrial resources for protection and restoration of transportation facilities. DOT has DPA protocols for civil transportation that can be issued quickly in times of crisis. In addition, the Department ensures that senior leadership and necessary decision-makers are briefed on the applicability of the DPA and the DPAS. The Federal Aviation Administration Crisis Management Handbook contains guidance regarding DPAS requests. DOT planning and procedures to address civil transportation preparedness and response for emergency conditions are addressed in ESF #1 (Transportation) of the NRF, which also addresses use of DPA authorities under emergency conditions.

The U.S. Maritime Administration (MARAD) has four long-established regulations derived from the DPA and relevant executive orders:

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

- 46 CFR Part 345—Restrictions Upon the Transfer or Change in Use or in Terms Governing Utilization of Port Facilities. This regulation requires prior approval of the National Shipping Authority (NSA) – MARAD’s emergency operations mode – to transfer or change utilization of port facilities, “to meet the requirements of the national security”
- 46 CFR Part 346—Federal Port Controllers. This regulation prescribes the standard form of agreement between the NSA and port authorities for the appointment and functions of Federal Port Controllers during national defense emergencies
- 46 CFR Part 347—Operating Contract. This regulation prescribes the standard form of contract to be entered into between the NSA and marine terminal operators during civil defense emergencies or national emergencies declared by the President.

DOT is developing procedures to address the recommendations in the Government Accountability Office (GAO) report titled “Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities,” GAO-08-854. Although DOT has internal protocols for its prioritization and allocation authorities, the GAO Report recommended, and DOT agreed, that the Department should develop and implement a priorities and allocation system. DOT anticipates finalizing its procedures in the coming year.

3.7. Use of Priorities and Allocations for Protection and Restoration of CIKR Operations

DPAS Delegation 4 authorizes DHS to place priority rated contracts and orders in support of DHS and State, local, and tribal government programs determined eligible by DHS for DPAS support. The Secretary of Homeland Security re-delegated his authority to the DHS/FEMA Administrator. Both DHS/FEMA and DOC are involved in DPAS actions involving use of priority ratings by other Federal agencies or owners and operators of critical infrastructure for civilian programs involving emergency preparedness or critical infrastructure operations. DHS/FEMA determines that the program is “necessary and appropriate to promote the national defense” and requests that DOC authorize use of a DPAS priority rating to support the civilian program, as appropriate.

There were several cases involving use of the DPAS in support of emergency preparedness and CIKR operations (not involving the Defense Industrial Base) during 2008, including:

- National Response Coordination Center, FEMA (to ensure timely upgrade of equipment)
- Restoration of the Federal Court House in Cedar Rapids, Iowa (to repair damage caused by the Midwest floods)
- Greater New Orleans Hurricane and Storm Damage Risk Reduction System, USACE (to support timely completion of this \$14.6-billion program by June 2011, as mandated by Congress)
- FEMA National Radio System (to ensure timely upgrade of emergency radio equipment)

- Geostationary Operational Environmental Satellite, R-Series program, National Oceanic and Atmospheric Administration, DOC (to support timely launch of satellites that will be used to detect and track severe weather and provide vital weather forecasts and warnings necessary for emergency planners to protect American lives and property).

FEMA also authorized Federal Coordinating Officers to place priority ratings on FEMA or other DHS contracts or orders for emergency preparedness and response activities, including restoration of CIKR operations (as needed), involving the following disasters:

- Midwest floods
- Hurricane Gustav
- Hurricane Ike.

3.8. Conclusion

DPA authorities, particularly the Section 101 authorities, have been used for critical infrastructure protection and restoration. Examples of such use were provided in this chapter. Federal departments with authority for priorities and allocations have been updating their procedures to use this authority for preparedness and CIKR-related activities. Beyond the actual uses of priority ratings to support CIKR operations, an increasing level of attention is being given to DPA authorities as tools for a full spectrum of emergency preparedness, response, and recovery activities, including critical infrastructure protection and response.

Appendix A. Acronyms

APAS	Agriculture Priorities and Allocation System
ASD (HD&ASA)	Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs
CAL	Critical Asset List
CIKR	Critical Infrastructure and Key Resources
CIPAC	Critical Infrastructure Partnership Advisory Council
CISP	Critical Infrastructure Security Program
DFOs	Defense Food Orders
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
DIB	Defense Industrial Base
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
E.O.	Executive Order
ESF	Emergency Support Function
GAO	Government Accountability Office
GCC	Government Coordinating Council
GSA	General Services Administration
HSDRRS	New Orleans Hurricane and Storm Damage Risk Reduction System
HSPD	Homeland Security Presidential Directive
HTS	High Temperature Superconductor
ISER	Infrastructure Security and Energy Restoration Division
ISR	Intelligence, Surveillance, Reconnaissance Systems
MARAD	Maritime Administration
NIPP	National Infrastructure Protection Plan
NRF	National Response Framework
NSA	National Shipping Authority
OE	Office of Electricity Delivery and Energy Reliability
PAIR	Priority Allocation of Industrial Resources
SCC	Sector Coordinating Council
SPA	Special Priorities Assistance

SSAs	Sector-Specific Agencies
SSPs	Sector-Specific Plans
USACE	United States Army Corps of Engineers
USD (AT&L)	Undersecretary of Defense for Acquisition, Technology, and Logistics
YBCO	Yttrium Barium Copper Oxide