



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

Calendar Year 2019 Report to Congress

April 29, 2020



Homeland
Security

Federal Emergency Management Agency

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Message from the Administrator

I am pleased to submit the Calendar Year (CY) 2019 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 that 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 Michael Crapo
Chairman, Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Sherrod Brown
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 Ron Johnson
Chairman, Senate Committee on Homeland Security and Governmental Affairs

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

The Honorable Bennie Thompson
Chairman, House Committee on Homeland Security

The Honorable Mike D. Rogers
Ranking Member, House Committee on Homeland Security

Inquiries regarding this report may be directed to FEMA’s Office of External Affairs’ Congressional and Intergovernmental Affairs Division at (202) 646-4500.

Sincerely,

A handwritten signature in blue ink, appearing to read "PTG", written over a white background.

Pete Gaynor
Administrator
Federal Emergency Management Agency

Executive Summary

This is the thirteenth 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, 2019 to December 31, 2019.

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 (E.O.) 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. provides 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 Homeland Security (for all other national defense programs, including civil defense and continuity of government).

During 2019, 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 the Department of Homeland Security (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.

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 and 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."

1.2 Background

1.2.1 Protection of Critical Infrastructure

Ensuring the security and resilience of the Nation's critical infrastructure is one of DHS' core missions. Through the efforts of CISA, DHS is at the forefront for promoting industry preparedness to reduce interruption of critical infrastructure operations. DHS works to continuously provide industry with analysis and mitigation recommendations to reduce both the likelihood and consequences of interruptions to critical infrastructure operations due to terrorism, natural catastrophes, cyber-attacks and systems degradation, or other national emergencies.

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. DHS is also responsible for coordinating with both government and critical infrastructure owners and operators to implement specific responsibilities identified in the National Infrastructure Protection Plan (NIPP); National Preparedness Goal; and 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) with coordinating day-to-day sector-specific activities; carrying out incident management responsibilities (consistent with statutory authority and other appropriate policies, directives, or regulations); providing, supporting, or facilitating technical assistance and consultations for sectors to identify vulnerabilities and help mitigate incidents; and supporting the Secretary of Homeland Security by providing 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 NIPP and supporting Sector-Specific Plans. The NIPP serves as the foundation for the integrated risk-informed approach used by government and private sector partners to identify, assess, and prioritize risks to 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 NIPP 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 infrastructure protection and resilience program over the long term. The NIPP integrates the concepts of resilience and protection and broadens the focus of NIPP-related programs and activities to the all-hazards environment. The critical infrastructure sectors and the SSAs are listed in Table 1.

Table 1. Sector-Specific Agencies for Critical Infrastructure

Sector-Specific Agency	Critical Infrastructure Sector
Departments of Agriculture ⁴ and Health and Human Services ⁵	Food and Agriculture
Department of Defense	Defense Industrial Base
Department of Energy ⁶	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 ⁷
Department of Homeland Security and General Services Administration	Government Facilities ⁸
Department of Homeland Security	Chemical Commercial Facilities Communications Critical Manufacturing Dams Emergency Services Information Technology Nuclear Reactors, Materials, and Waste

⁴ USDA is responsible for agriculture and food (meat, poultry, and egg products).

⁵ HHS is responsible for food other than meat, poultry, and egg products. Its food jurisdiction includes shell eggs.

⁶ The Energy Sector includes the production, refining, storage, and distribution of oil, gas, and electric power, except for commercial nuclear power facilities.

⁷ PPD-21 designates DOT as a co-SSA with DHS for the Transportation Systems sector.

⁸ PPD-21 designates the General Services Administration as a co-SSA with DHS for the Government Facilities sector.

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 or to maximize domestic energy supplies. 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.

The DPA priorities and allocations authority has been a cornerstone of the DOD acquisition process since 1950. Beginning in 1970, Congress has 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 which 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.

The President's priorities and allocations authority is delegated in E.O. 13603 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.

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

Section 202 of E.O. 13603 provides that its section 201 authority 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/FEMA⁹ to be “necessary or appropriate to promote the national defense.”

⁹ The Secretary’s responsibility identified in Executive Order 13603 to make Section 202 determinations has been delegated to the FEMA Administrator by DHS delegation.

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 E.O. 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 1950¹⁰. 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, 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.

DOC/BIS has authorized additional federal agencies, on a case-by-case basis, to place priority ratings on contracts and orders to expedite the delivery of industrial resources to support the protection of government facilities, a critical infrastructure sector. 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 as well as 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 will detail 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 Fiscal Year 2019, Census reported placing seven priority rated contracts which require preferential acceptance and scheduling to ensure timely availability of critical industrial items (network drives, servers) necessary for a successful Decennial Census. These seven priority-rated contracts totaled

¹⁰ 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).

approximately \$14 million in value.

Among the uses of 2020 Census data is to provide critical data to first responders—whether they are military, law enforcement, or emergency preparedness – necessary to do their jobs. This includes up-to-date maps, population counts, and population distributions. These tools provide the foundation for evacuation plans, disaster response, recovery operations, and are essential to the overall planning and deployment for federal agencies, including FEMA, and state and local governments. The 2020 Census data will also be used to reduce interruptions in critical infrastructure under normal and emergency conditions.

In January 2017, DOC/BIS created a training course on DPAS that is designed to assist any company that receives priority rated contracts, subcontracts, or purchase orders from the U.S. Government or U.S. Government contractors. The goal of this course is to provide a basic understanding of the DPAS as well as provide a guide for applying the DPAS to contracts and purchase orders. Since the training course was uploaded to the DOC/BIS website, it has been downloaded approximately 25,000 times.

2.2 Department of Defense

The U.S. Army Corps of Engineers (USACE) continues to support the restoration of electrical infrastructure in Puerto Rico through the acquisition and issuing of electrical material to the Puerto Rico Electrical Power Authority (PREPA). In support of the Puerto Rico Department of Natural and Environmental Resources (DNER), USACE is providing contracted services and maintenance for critical storm water drainage and discharge pumps.

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. Elements of 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 2019. To maintain the appropriate level of preparedness, these elements continue to train on the potential use of DOE's DPA authority in anticipation of its use in emergency response exercises such as the National Level Exercise.

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 CY19, DHS/FEMA rated 125 contracts and 267 orders. Approximately 60% of these rated orders involved resources needed to support disaster survivors and first responders, meet communications and information technology needs, and other logistical needs associated with disaster response and recovery efforts. In general, priority-rating authority was not needed to support restoration of critical infrastructure operations.

To promote the emergency preparedness of industry to reduce interruption of critical infrastructure and key resource operations, DHS issued new and updated delegations of priority-rating authority within DHS, developed new and improved guidance and procedures for use of rated orders, and tested these delegations of authority, guidance, and procedures in exercises involving disaster scenarios.

Specifically, DHS:

- Developed additional DPA priority rating guidance for FEMA's Office of the Chief Procurement Officer;
- Conducted numerous outreach and training actions for DHS staff and contractors;
- Updated training courses published by the Emergency Management Institute, and
- Prepared a scenario for DPA involvement in the National Level Exercise (NLE) 2020¹¹ involving restoration of critical infrastructure.

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 and shared a TPAS Authorization Request Form with relevant federal departments and agencies to help requestors provide DOT the information needed to decide on TPAS priority ratings.

¹¹ The setting for this exercise calls for substantial damage to critical infrastructure. Efforts to restore critical services supported by the private sector will be an important consideration in recovery phase of the exercise. The 2020 National Level Exercise was cancelled due to the Coronavirus pandemic.

Appendix A- Acronyms

CISA	Cybersecurity and Infrastructure Security Agency
CY	Calendar Year
DHS	Department of Homeland Security
DNER	Puerto Rico Department of Natural and Environmental Resources
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
FPAS	Federal Priorities and Allocations System
HHS	Department of Health and Human Services
NIPP	National Infrastructure Protection Plan
NLE	National Level Exercise
NNSA	National Nuclear Security Administration
PPD	Presidential Policy Directive
PREPA	Puerto Rico Electrical Power Authority
SSA	Sector-Specific Agency
TI	United States Decennial Census 2020 Technical Integrator Program
TPAS	Transportation Priorities and Allocations System
USACE	U.S. Army Corps of Engineers
USDA	United States Department of Agriculture