



FEMA

AUG 04 2011

MEMORANDUM FOR: Deputy Administrator
Deputy Administrator for National Preparedness and Protection
Associate Administrator, Mission Support
U.S. Fire Administrator
Regional Administrators
Federal Insurance and Mitigation Administrator
Associate Administrator, Response and Recovery
Federal Coordinating Officers

FROM: David J. Kaufman 
Director
Office of Policy and Program Analysis (OPPA)

SUBJECT: Updated Guidance on Use of the Defense Priorities and
Allocations System (DPAS) to Ensure Timely Procurement of
Food Resources

- 1. Purpose:** This memorandum updates guidance on the use of DPAS priority ratings for certain food resources in support of Department of Homeland Security (DHS) Approved Programs.
- 2. Background:** On January 7, 2010, the Administrator delegated authority pursuant to DPAS Delegation 4 authority to the addressees on this memorandum to place "DO" rated orders in support of DHS Approved Programs, as listed in Schedule 1 of 15 CFR Part 700. The Administrator also directed the Director of OPPA to provide guidance, procedures, and coordination for the functions and duties assigned to the Administrator pursuant to DPAS Delegation 4. Guidance and procedures for placement of rated orders is provided in the DPAS regulations [15 CFR 700], DPAS Delegation 4, the FEMA DPAS Directive [FD 211-1] and Manual [FD 211-1-1], and two memoranda entitled "Delegation of Authority Under Defense Priorities and Allocations System (DPAS) Delegation 4" and "Guidance on Use of the Defense Priorities and Allocations System (DPAS) to Ensure Timely Procurement of Food Resources" from the Director of OPPA to the addressees on this memorandum. (All of these documents may be reviewed at the Defense Production Act (DPA) Program Division website: <http://www.fema.gov/about/programs/dpa/>.)
- 3. Use of DPAS for Food Resources:** USDA and DOC have entered into a new agreement that authorizes DHS to place DPAS rated orders for certain food resources in support of DHS Approved Programs. Pursuant to this agreement and the January 7, 2010, delegation of DPAS Delegation 4 authority from the Administrator, the addressees on this memorandum are now

authorized to use their DPAS Delegation 4 authority to place rated orders for food resources, subject to the limitation described in the following paragraph. This authority will continue in effect until such time as USDA issues final regulations providing procedures for use of its DPA priorities authority with respect to food resources. In general, eligible food resources under the USDA-DOC agreement include, but are not limited to: Meals Ready-to-Eat; commercial self-heating meals; commercially packaged foodstuffs; commercial grocery items; carbonated beverages; fruit juices and other liquid consumables (other than water). (For a complete definition of “food resources,” see the Attachment entitled “The Exercise of Authority by the Department of Homeland Security, Federal Emergency Management Agency Under DPAS Delegation 4.”)

The DPAS Delegation 4 limitation on use of rated orders for “common use items” applies with respect to food resources. Rated orders may not be used for food resources that are commonly available in commercial markets for general consumption and do not require major modification when purchased for approved program use, unless these items are in short supply. This limitation does not apply to Meals Ready-to-Eat or other food resources that are, generally, prepared or packaged to meet national defense procurement needs, including disaster preparedness and response needs. Nor does this limitation apply for contracts and orders placed to prepare for, respond to, or recover from a declared emergency or disaster under the Stafford Act. In the event of a declared emergency or disaster, it may be assumed that food resources needed for emergency preparedness, response, and recovery activities are in short supply and could not be procured in a timely fashion without using a rated order.

4. Finding Requirement: The use of DPAS Delegation 4 authority to support emergency preparedness activities or measures conducted pursuant to title VI of the Stafford Act requires a finding by the Director of OPPA 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. In accordance with this requirement, each addressee on this memorandum is requested to identify programs within his or her jurisdiction that may qualify for DPAS support and to submit a list of such programs to the Director of OPPA. After programs have been identified, the Director of OPPA will make the required DPAS Delegation 4 finding, as appropriate, with respect to each program, and DPAS rated orders may be placed in support of these programs, as necessary and appropriate.

5. Reporting Requirements: DPAS Delegation 4 and the authorization involving food resources both require periodic reports on use of the DPAS Delegation 4 authority. To support preparation of the required reports by OPPA, addressees on this memorandum are required to complete and submit to the Director of OPPA a quarterly status report that identifies contracts and orders that have been rated pursuant to the delegation of DPAS Delegation 4 authority from the Administrator. A template for this quarterly report is provided in a second attachment. Please provide a point of contact, who will be responsible for your component’s quarterly report.

6. Questions: Questions regarding this memorandum should be directed to William Watrel, in OPPA, who can be reached at work: 202-646-3153; fax: 202-646-4601; or email: fema-dpas@dhs.gov.

Attachments

ATTACHMENT 4

The Exercise of Authority by the Department of Homeland Security, Federal Emergency Management Agency under DPAS Delegation 4

Executive Order 12919 of June 3, 1994 sets forth the authorities and responsibilities of Agencies under the Defense Production Act (DPA) of 1950, as amended, with respect to the placing of priority contracts and orders for materials, services and facilities to promote the national defense.

Under Section 201 of the Executive Order, the Secretary of Agriculture is delegated authority with respect to food resources, food resource facilities and the domestic distribution of farm equipment and commercial fertilizer. Under Section 201 of the Executive Order, the Secretary of Commerce is delegated authority with respect to all other materials, services and facilities, including construction materials not delegated to another Agency head in Section 201 defined in the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700) as industrial resources. In order to reflect a mutual understanding regarding jurisdiction over food resources with industrial uses and domestic distribution of farm equipment, the Department of Commerce (DOC) and the U.S. Department of Agriculture (USDA) have entered into a "Memorandum of Understanding between the Departments of Agriculture and Commerce concerning Priorities and Allocations Jurisdiction and Responsibilities for Foods which have Industrial Uses and the Domestic Distribution of Farm Equipment" (effective July 30, 1998) (hereinafter, "USDA/DOC MOU").

Critical Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) programs may require the placing of rated contracts and orders for food resources in support of essential civilian needs. The Secretary of Homeland Security has been delegated authority by DOC to issue priority ratings on contracts and orders for industrial resources in support of programs determined by the Secretary, as necessary or appropriate to promote the national defense as defined in Section 702(14) of the DPA with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

The Department of Homeland Security (DHS) is requesting priorities authority to be able to place priority ratings on contracts or purchase orders for Meals Ready-to-Eat, shelf-stable meals and other food resources to meet essential civilian needs during emergency preparedness, response and recovery activities conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5195, et seq.). In response to this need and consistent with the authority already delegated to the Secretary of Homeland Security under DPAS Delegation 4 and the USDA/DOC MOU, the undersigned representatives of the Departments of Agriculture and Commerce hereby agree that, notwithstanding Section 700.18(b)(1)(i) of the DPAS regulations, DHS may place rated contracts and orders under DPAS for food resources to promote the national defense, with respect to essential civilian needs supporting national defense and emergency preparedness, including civil defense and continuity of government and directly related activities. These food resources include, but are not limited

to, Meals Ready-to-Eat; commercial self-heating meals; commercially packaged foodstuffs; commercial grocery items; carbonated beverages; fruit juices and other liquid consumables (other than water).

For the purposes of this agreement, "food resources" shall mean all commodities and products (simple, mixed, or compound) or complements to such commodities or products that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. For these purposes, the term "food resources" shall also include all starches; sugars; vegetable, animal, marine fats and oils; cotton; tobacco; wool; mohair; hemp; flax fiber; and naval stores but shall not include any such material after it loses its identity as an agricultural commodity or agricultural product.

DHS/FEMA may use Program Identification Symbol N-1 as set forth in Schedule I to Part 700 to fulfill this agreement.

This exercise of authority continues in effect until such time as USDA issues final regulations providing procedures for use of its DPA priorities authority with respect to food resources.

The Secretary of Homeland Security, in consultation with USDA and DOC, shall provide USDA and DOC with bi-annual reports on DHS's use of this delegated priorities authority for food resources. Reports shall be submitted within 14 days after each six-month period and include activities conducted during the previous six months (a list of priority rated contracts/orders placed, dollar value of each contract/order and supplier). If this delegated authority is rescinded before the prescribed date, DHS shall submit a report for activities conducted up to the time the delegation was rescinded.

This agreement supersedes Attachment 3, dated July 22, 2010.



Kevin J. Wolf
Assistant Secretary
Export Administration



Bruce Nelson
Acting Administrator
Farm Service Agency

Date: 6/15/11

Date: 6/21/11

**Report on Use of Priority-Rating Authority
Under the Defense Priorities and Allocations System (DPAS)**

[Date]

MEMORANDUM TO: David J. Kaufman
Director
Office of Policy and Program Analysis
Federal Emergency Management Agency

FROM: [Name]
[Title]
[Organization]

SUBJECT: Quarterly Status Report on Use of Priority Rating Authority in Support of Emergency Preparedness, Response, and Recovery Activities.

1. Reporting Period [indicate fiscal quarter]: _____
2. Was the priority rating authority used during the fiscal quarter? ____Yes ____No

If yes, please fill out the following:

Contract Number	Contract Performance Period	Dollar Amount	Title/Purpose of the Contract

[To file this report electronically, please contact William Watrel, DPA Program Analyst, OPPA, at 202-646-3153 or william.watrel@dhs.gov.]