

U.S. Department of Agriculture

APAS Delegation 2

DELEGATION OF AUTHORITY TO THE SECRETARY OF HOMELAND SECURITY

Agriculture Priorities and Allocations System

(7 CFR Part 789)

A. Authority.

Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 – 2170, 2171, and 2172), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 – 5197h); Executive Order 13603 (77 FR 16651, 3 CFR, 2012 Comp., p. 225); and Executive Order 12656 (53 FR 47491, 3 CFR, 1988 Comp., p. 585).

B. Purpose.

This document (delegation) delegates certain authority from the U.S. Department of Agriculture (USDA) to the Secretary of Homeland Security necessary for the effective implementation of the Agriculture Priorities and Allocations System (APAS) regulation (7 CFR part 789). The APAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders 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.

C. Delegation of Rating Authority.

The secretary is delegated authority under the APAS to:

(1) Place DO or DX priority rated contracts and orders for food resources (as defined in section 801(e) of Executive Order 13603) in support of Department of Homeland Security (DHS) programs determined by the secretary to be necessary or appropriate to promote the national defense, as defined in section 702(14) of the Defense Production Act of 1950, in accordance with section 202 of Executive Order 13603 (i.e., approved programs). In placing these rated orders for food resources, DHS must use the appropriate program identification symbol listed in Schedule I to the APAS regulation (see Attachment). Upon written concurrence from USDA, DHS may also authorize other federal agencies to make procurements on their behalf and only on rated contracts that are based on the APAS authority. The DO or DX priority ratings would be placed on these contracts or orders, which are for food resources in support of approved programs.

(2) Place DO or DX priority rated contracts and orders for food resources in support of DHS programs and state, local, tribal, and territorial ("SLTT") government programs for emergency preparedness, mitigation, response and recovery programs, as determined by the secretary, to be necessary or appropriate to promote the national defense. In placing these rated orders for food resources, DHS must use the appropriate program identification symbol listed in Schedule I to the APAS regulation (see Attachment 1). Upon written concurrence from USDA, DHS may also authorize other federal agencies to make procurements on their behalf and only on rated contracts that are based on the APAS authority. The DO or DX priority ratings would be placed on these contracts or orders, which are for food resources in support of approved programs.

(3) Endorse and forward to USDA's Farm Service Agency to the attention of Mark Rucker, Deputy Administrator for Management, for appropriate action, the requests of other federal agencies for authority to place DO or DX priority rated contracts and orders for food resources in support of programs, as determined by the secretary to be necessary or appropriate to promote the national defense.

(4) Endorse and forward to USDA's Farm Service Agency to the attention of Mark Rucker, Deputy Administrator for Management, for appropriate action, the requests of owners and operators of critical infrastructure to place DO or DX priority rated contracts and orders for food resources in support of critical infrastructure protection or restoration related-programs, as determined by the Secretary to be necessary or appropriate to promote the national defense.

(5) Endorse and forward to USDA's Farm Service Agency to the attention of Mark Rucker, Deputy Administrator for Management, for appropriate action, requests to place DO or DX priority rated contracts and orders for food resources in support of critical infrastructure assistance to any foreign nation or international organization, as determined by the secretary to be necessary or appropriate to promote the national defense.

D. Acceptance and Rejection Requirements for Emergency Preparedness Activities.

The authority delegated to the secretary under Section C of this delegation, is subject to the following requirements related to acceptance and rejection of orders placed in support of emergency preparedness activities conducted under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act:

(1) DO or DX priority rated contracts and orders for food resources must include the statement set forth in 7 C.F.R. § 789.12(a)(4)(ii) if the rated contract or order for food resources is placed for the purpose of emergency preparedness requirements and an expedited action is necessary and appropriate to meet these requirements. The minimum time for acceptance or rejection that DHS orders may specify is six hours after receipt of the order if the order is issued in response to a hazard that has occurred or twelve hours after receipt if the order is issued to prepare for an imminent hazard.

E. Special Priorities Assistance.

The secretary may refer to USDA requests by person for special priorities assistance related to food resources upon determining the need for the requested assistance in support of DHS approved programs. DHS will: (i) serve as the initial point of contact for persons needing assistance; (ii) verify the accuracy of the information provided and make reasonable efforts to resolve the issues; and, when necessary, (iii) expeditiously forward the request to USDA to facilitate timely resolution. Upon receipt of the request for special priorities assistance, USDA will take immediate action to affect resolution and will keep DHS advised of progress.

F. Re-delegation of Authority.

The authority granted by this delegation may be re-delegated within DHS. It may not be re-delegated to any other federal agency without the written concurrence of USDA's Farm Service Agency, Deputy Administrator for Management, Mark Rucker. Any other U.S. agency re-delegated this authority by DHS must be deemed an associated agency of DHS.

G. Compliance, Audits, and Training.

In exercising this delegation, the secretary must ensure that DHS, a DHS contractor, an associated agency, state, local, tribal, and territorial government, and critical infrastructure owner and operator personnel are in full compliance with the provisions of the APAS. Accordingly:

- (1) The secretary, in consultation with USDA's Farm Service Agency, emergency preparedness division director, must provide USDA with a bi-annual report on the use of this delegated authority by DHS and any associated agency. Each report must identify the recipient of the rated order, applicant of priority rating/allocation placement, contract date of priority rating/allocation, commodity description, commodity quantity, commodity price, delivery date, supplier, justification, and any other information as determined by USDA to be necessary.
- (2) The secretary is delegated the authority to review the implementation of the APAS by all persons who receive or are authorized to place, rated orders for food resources supporting DHS approved programs, including critical infrastructure protection and restoration. This review must not include inquiries into the unrated business of these persons.
- (3) The secretary must notify USDA of any alleged violations of the priorities and allocations provisions of the Defense Production Act and the APAS related to contracts and orders for food resources.
- (4) In coordination with USDA, the secretary must conduct a continuing training program to ensure that DHS, a DHS contractor, an associated agency, state, local, tribal, and territorial governments, and critical infrastructure owner and operator personnel are thoroughly familiar with the provisions of the APAS and this delegation.

H. Limitations of Authority.

Any authority not specifically delegated to the secretary in this delegation is reserved by USDA. This delegation must be implemented in accordance with the APAS and any other related regulations or official actions issued by USDA. It does not limit the authority of the Secretary of Agriculture under Executive Order 13603 or any other authority.

I. Effective Date and Revocation of Previous Delegations.

(1) This delegation must take effect as of the date of its execution by the signature below.

(2) This delegation revokes all previous delegations of authority issued by USDA to DHS under the authorities referred to in Section A of this delegation.

(3) Attachment 5, The Exercise of Authority by the Department of Homeland Security, Federal Emergency Management Agency under DPAS Delegation 4, dated October 21, 2014, will terminate one year following the execution of this delegation.

Dated: 2/22/16



Val Dolcini

Administrator, Farm Service Agency

United States Department of Agriculture

Attachment 1

AGRICULTURE PRIORITIES AND ALLOCATIONS SYSTEM

SCHEDULE 1 TO PART 789

DEPARTMENT OF AGRICULTURE APPROVED PROGRAMS

Program
Identification
Symbol

- P1 Food and food resources (civilian)
- P2 Agriculture and Food Critical Infrastructure Protection and Restoration