

Enclosure: **Authorizing statute and regulations**

- a. Defense Production Act of 1950, as amended (50 App. U.S.C. §§2061-2170). Title I (Section 2071) governs MARAD's activities in the port readiness/priorities and allocations of materials and facilities program.

“§2062. Declaration of policy

(a) Findings

Congress finds that—

(1) the security of the United States is dependent on the ability of the domestic industrial base to supply materials and services for the national defense and to prepare for and respond to military conflicts, natural or man-caused disasters, or acts of terrorism within the United States;

(2) to ensure the vitality of the domestic industrial base, **actions are needed**—

(A) **to promote industrial resources preparedness** in the event of domestic or foreign threats to the security of the United States;

(B) to support continuing improvements in industrial efficiency and responsiveness;

(C) to provide for the protection and restoration of domestic critical infrastructure operations under emergency conditions; and

(D) to respond to actions taken outside of the United States that could result in reduced supplies of strategic and critical materials, including energy, necessary for national defense and the general economic well-being of the United States;

(3) in order to provide for the national security, the **national defense preparedness effort of the United States Government requires**—

(A) **preparedness programs to respond to both domestic emergencies and international threats to national defense;**

(B) **measures to improve the domestic industrial base for national defense;**

(C) the development of domestic productive capacity to meet—

(i) **essential national defense needs that can result from emergency conditions;**

and

(ii) **unique technological requirements; and**

(D) **the diversion of certain materials and facilities from ordinary use to national defense purposes, when national defense needs cannot otherwise be satisfied in a timely fashion;**

(4) to meet the requirements referred to in this subsection, this Act [sections 2061 to 2170, 2171, and 2172 of this Appendix] provides the President with an array of authorities to shape national defense preparedness programs and to take appropriate steps to maintain and enhance the domestic industrial base;”

(b) Statement of policy

It is the policy of the United States that—

(1) to ensure the adequacy of productive capacity and supply, **Federal departments and agencies that are responsible for national defense acquisition should continuously assess the capability of the domestic industrial base to satisfy production requirements under**

both peacetime and emergency conditions, specifically evaluating the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel;
(2) every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment;

“§2071. Priority in contracts and orders

(a) Allocation of materials, services, and facilities The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) 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.”

“§2073. Penalties

Any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this title [sections 2071 to 2078 of this Appendix] or any rule, regulation, or order thereunder, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.”

(Sept. 8, 1950, ch. 932, title I, §103, 64 Stat. 799.)

- b. Executive Order 12656 of November 18, 1988 (53 FR 47490). Assignment of Emergency Preparedness Responsibilities. (Amended by: E.O. 13074 (February 9, 1998; 63 FR 7277, February 12, 1998 - amendment is concerned with force deployment with respect to evacuation of U.S. citizens in threatened areas overseas) and E.O. 13228 (October 8, 2001; 66 FR 51812, October 10, 2001, which established the Office of Homeland Security and the Homeland Security Council)). Part 14, Section 1401 (1) states that the Secretary of Transportation shall develop plans to promulgate and manage overall national policies, programs, procedures, and systems to meet essential civil and military transportation needs in national security emergencies. Section 1401 (7) states that the Secretary shall develop plans for the emergency operation of U.S. ports and facilities and use of shipping resources.
- c. Executive Order 13603 of March 16, 2012 (77 FR 1665177FR16651). National Defense Resources Preparedness. This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended, except for the amendments to Title III of the Act in the Energy Security Act of 1980 and telecommunication authorities under Executive Order No. 12472. Sections 201(4) and 901 delegate to the Secretary of Transportation the power to require all priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense concerning the field of civil transportation.

- d. 49 CFR Part 1.93 (d) & (l). - Delegation of authority to carry out the responsibilities of the National Shipping Authority and administer a preparedness program for industrial mobilization for national defense needs under the Defense Production Act to MARAD from the Secretary of Transportation.
- e. 46 CFR Part 340 - Priority Use and Allocation of Shipping Services, Containers, Chassis, and Port Facilities and Services for National Security and National Defense Related Operations. Establishes procedures for defense agencies to request priority use and allocation of commercial shipping and port services and facilities upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense.
- f. 49 CFR Part 33 -Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act. Clarifies the priorities and allocation authorities exercised by the Secretary of Transportation and establishes administrative procedures.

“Subpart B—Definitions. § 33.20 Definitions. The following definitions pertain to all sections of this part:

Official action means an action taken by the Department of Transportation or another resource agency under the authority of the Defense Production Act, Executive Order 13603, and this part. Such actions include, but are not limited to, the issuance of Rating Authorizations, Directives, Set-Asides, Allotments, **Planning Orders**, Memoranda of Understanding, **Demands for Information**, Inspection Authorizations, and Administrative Subpoenas.

Planning order means notification of tentative arrangements to meet national defense requirements issued in priority order or allocation order format, for planning purposes only.”

[Final Rule, Section by Section Analysis, FR 59795: “33.20 Definitions. “Planning order” defines an administrative tool used by DOT’s Maritime Administration.”]

“Subpart F—Official Actions. § 33.60 General provisions. (a) The Department of Transportation may take specific official actions to implement the provisions of this part. (b) These official actions include, but are not limited to, Rating Authorizations, Directives, **Planning Orders**, and Memoranda of Understanding.”

“Subpart G—Compliance. § 33.70 General provisions. (a) The Department of Transportation may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes or this part. Such actions include Administrative Subpoenas, Demands for Information, and Inspection Authorizations. (b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part. (c) **Willful violation of** the provisions of title I or Section 705 of the Defense Production Act and other applicable statutes, **this part, or an official action of the Department of Transportation, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in section 33.74 of this part.**”