

## APPENDIX D. FEDERAL EMERGENCY AUTHORITIES AND POLICY DIRECTIVES

There are a range of emergency authorities and policy directives relevant to the energy sector that apply to the Federal Government, including the following:

### Federal Statutes

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.:** Provides broad Federal authority to remove or arrange for the removal, or take any other response measures when: (a) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (b) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

**Defense Production Act (DPA), 50 U.S.C. App. § 2061 et seq. (2014), as amended:** Provides authority to ensure timely availability of resources for national defense and civil emergency preparedness and response, including energy-related assets.

**Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6201 et seq.:** Directs the Secretary of Energy to establish, operate, and maintain the Strategic Petroleum Reserve, which includes the Northeast Gasoline Supply Reserve, and provides for the presidentially directed drawdown of the reserves through the Secretary of Energy. It also authorizes the Secretary of Energy to establish and manage the Northeast Home Heating Oil Reserve.

**Federal Energy Administration Act, 15 U.S.C. § 761 et seq.:** Grants DOE the authority to collect, evaluate, and analyze energy information from facilities or businesses operating in any phase of energy supply or major energy consumption.

**Federal Power Act (FPA), 16 U.S.C. § 791a et seq.:** Provides the Secretary of Energy authority in time of emergency to order temporary interconnections of facilities and generation, delivery, interchange, or transmission of electric energy necessary to meet an emergency.

**Merchant Ship Sales Act of 1946, 50 U.S.C. App. § 1735 et seq.:** Authorizes the Maritime Administration (MARAD) to maintain ships in a National Disaster Recovery Framework, (NDRF), to acquire and dispose of NDRF vessels, and to break out and operate such ships for the account of the Federal Government during periods of national emergency. It also authorizes MARAD to charter government-owned ships to private operators when it is determined that privately owned tonnage is not available at reasonable rates. Originally, it authorized the sale of government-owned ships, but that authority expired (see Section F, the Shipping Act, 1916).

**Natural Gas Policy Act (NGPA), 15 U.S.C. § 717 et seq.:** Authorizes the President (and the Secretary of Energy per Executive Order 10485) to allocate supplies of natural gas to help alleviate an existing or imminent presidentially declared, severe natural gas shortage that would endanger the supply of gas for high-priority uses.

**Ports and Waterways Safety Act of 1972 (PWSA), 33 U.S.C. § 1221 et seq.:** Provides port safety authority to the Captain of the Port to protect the use of ports and waterways or maritime commerce.

**Powerplant and Industrial Fuel Use Act (FUA), 42 U.S.C. § 8301 et seq.:** Provides the President with authority to allocate coal to power plants or major fuel-burning installations or to order a switch to a fuel other than natural gas or petroleum upon finding a severe energy supply interruption.

**Rivers and Harbors Act, 33 U.S.C. § 1:** Requires the Secretary of the Army to prescribe regulations for the use of navigable waters of the United States as the public necessity may require for the protection of life and property, or for operations of the United States in channel improvement. Allows exceptions for the improvement of navigable waters or construction of public works considered necessary and proper; allows the Secretary of the Army to permit the deposit of any waste in navigable waters in certain circumstances.

**Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq, as amended:** Establishes Federal authority to guide responses to emergencies and disasters. The Federal Emergency Management Agency (FEMA) is the lead agency for coordinating Federal emergency response; FEMA may require other Federal agencies to provide resources and personnel to support emergency and disaster assistance efforts.

### **Executive Branch Actions**

**National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300:** Establishes the National Response Team and delineates its roles and responsibilities in the national emergency response system, including planning and coordinating emergency responses, providing guidance to Regional Response Teams, coordinating a national program of preparedness planning and response, and facilitating research to improve response activities.

**Homeland Security Presidential Directive 5 (HSPD-5) – (Feb. 28, 2003):** Establishes a single, comprehensive National Incident Management System under the purview of the Department of Homeland Security (DHS) under which other Federal agencies provide their cooperation, resources, and support. The directive also provides direction for Federal assistance to State and local authorities.

**Presidential Policy Directive 8 (PPD-8) —National Preparedness – (Mar. 30, 2011):** Replaces prior national planning directives and takes an “all-of-Nation” approach to prepare for a wide range of threats and emergencies. National Planning Frameworks—coordinating structures of key Federal agencies and other stakeholders—have been established around five mission areas: Prevention, Protection, Mitigation, Response, and Recovery.

**Presidential Policy Directive 21 (PPD-21)—Critical Infrastructure Security and Resilience – (Feb. 12, 2013):** Establishes shared responsibility for strengthening critical infrastructure security across the Federal government and names Sector-Specific Agencies for each critical infrastructure sector. The Department of Energy (DOE) is the Sector-Specific Agency for the energy sector. Goals will be achieved through partnerships with owners and operators of critical infrastructure to improve protections (both physical and cyber infrastructure), information sharing, and risk-based standards.

**Executive Order No. 13636, Improving Critical Infrastructure Cybersecurity, 78 Fed. Reg. 11739 (Feb. 19, 2013):** Directs the Executive Branch to develop a technology-neutral voluntary cybersecurity framework to: promote and incentivize the adoption of cybersecurity practices; increase the volume, timeliness and quality of cyber threat information sharing; incorporate strong privacy and civil liberties

protections into every initiative to secure our critical infrastructure; and explore the use of existing regulation to promote cyber security.

**Executive Order No. 12656, Assignment of Emergency Preparedness Responsibilities, 53 Fed. Reg. 47491 (Nov. 18, 1988):** Assigns preparedness responsibilities to Federal agencies and requires agencies to be prepared to respond adequately to all national security emergencies, including developing emergency plans and designating an Emergency Coordinator.

### Energy Emergency Waivers of Federal and State Regulations

Various Federal and State authorities enable action in response to natural disasters and other events that impact fuel diversity from facilitating swift response to energy emergencies to providing essential fuel supplies to first responders and consumers. In many cases, these authorities allow temporary waivers to requirements and restrictions, as necessary, on government and industry. Federal and State agencies have access to a wide variety of waiver authorities, including several key ones referenced in Table I-4.

**Table I-4. Federal and State Waivers for Fuels Supply Assurance. Source: American Petroleum Institute, 2013.**

Agency	Waiver	Used for	Allows
EPA	40 C.F.R. §§ 80.510 and 80.520	Ultra-Low Sulfur Diesel	Allows the use of higher sulfur diesel in older cars, generators, and for home heating
EPA	40 C.F.R. § 60 Subpart XX and § 63 Subparts R,Y, and BBBBBB	Vapor Recovery	Allows fuel terminals to forego the use of vapor-recovery equipment
DOT	49 C.F.R. § 390	General Administrative Requirements	Allows transporters to forego regulatory requirements regarding vehicle labelling and record-keeping
DOT	49 C.F.R. § 173.242 and 172 Subparts C,D,F, and I	HazMat Specifications	Relaxes standards for vehicles used to ship fuel
DOT	46 U.S.C. § 551	Jones Act	Allows foreign vessels to deliver goods between U.S. ports.
DOT	46 U.S.C. § 55113	Foreign Oil Spill Response Vessels	Expedites allowances of foreign vessels to help in containing and cleaning oil spills
Coast Guard	Captain of the Port Order 33 U.S.C. § 1221	Vessel Movement	Allows Coast Guard to use discretion in controlling vessels through hazardous areas
State	State	Reid Vapor Pressure	States can waive reid vapor pressure requirements to allow imports from less-regulated states
State	State	Biofuel Blending	Allows the lifting of blending fuel quotas
State	State	Weight Limits	Allows states to waive weight limits for trucks carrying fuels
State	State	Retail Labelling Requirements	Allows sale of fuels that don't contain the mixture labelled at the pump
State	State	Importer/Exporter Licenses	Waives fees and licenses for importers moving across state lines