



**Office of the Attorney General**  
**Washington, D.C. 20530**

April 25, 2009

MEMORANDUM FOR THE PRESIDENT

FROM: *[Signature]* THE ATTORNEY GENERAL

CC: THE SECRETARY OF STATE  
 THE SECRETARY OF DEFENSE  
 THE SECRETARY OF HEALTH AND HUMAN SERVICES  
 THE SECRETARY OF HOMELAND SECURITY  
 CHIEF OF STAFF TO THE PRESIDENT  
 ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS  
 COUNSEL TO THE PRESIDENT

RE: SUMMARY OF LEGAL AUTHORITIES FOR USE IN RESPONSE TO AN  
 OUTBREAK OF PANDEMIC INFLUENZA

As a precaution in light of reports regarding the possible spread of an influenza outbreak in Mexico, I outline below a brief summary of the major relevant legal authorities for a federal response to a pandemic influenza emergency. As outlined below, the Executive Branch has substantial authorities given by statute or regulation to various agencies that could be used to limit the spread of a pandemic. These include the authority to impose quarantines; control the borders; regulate transportation; and to coordinate with and provide assistance to state and local governments. While individual agencies are in the best position to describe the full extent of their legal authorities, the outline below reviews the major relevant legal authorities. I have also attached a memorandum I received from the Office of Legal Counsel at the Department of Justice which provides additional detail regarding these legal authorities.

**Overall Emergency and General Public Health Authorities**

- ***Presidential Declaration of Emergency:*** The President is empowered to issue "major disaster" or "emergency" declarations in response to catastrophes that overwhelm State and local governments under the Stafford Act, 42 U.S.C. § 5121 *et seq.*, which enables federal assistance and relief in connection with the disaster or emergency.
- ***Coordination by DHS:*** The Secretary of Homeland Security is the principal federal officer for domestic incident management and is responsible for coordinating federal operations within the United States to prepare for, respond to, and recover from (among other things) large-scale medical emergencies.
- ***HHS Lead on Public Health Emergencies:*** In the case of a medical emergency, the Secretary of Health and Human Services is responsible for leading all federal public health and medical responses to public health emergencies and incidents. The Secretary has broad authority to declare, after consultation with appropriate public health officials,

that a disease or disorder presents a “public health emergency” and may “take such action as may be appropriate” to respond to that emergency, including investigating the cause, treatment, or prevention of the disease or disorder, and superceding certain statutory and regulatory requirements relating to medical care under the Public Health Services Act

### Authority to Impose Quarantines

- ***HHS Can Implement Federal Quarantine:*** The Surgeon General, with the approval of the Secretary of Health and Human Services, is authorized under 42 U.S.C. § 264 to make and enforce quarantine regulations “necessary to prevent the introduction, transmission, or spread of communicable diseases” *from foreign countries into the States or possessions, or from one State or possession into another* for communicable diseases specified by the President, including “influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.” The Secretary must make a medical determination that a particular strain of influenza falls within this class.
- ***Quarantine Authority is Constitutional:*** The exercise of the quarantine power has long been recognized as a proper exercise of governmental authority and is, as a general matter, constitutional. *See Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905). Existing federal quarantine regulations are skeletal and do not provide a process for challenging the imposition of restrictions on movement, which may present constitutional concerns.
- ***Scope of Federal Quarantine:*** There is broad authority to implement a federal quarantine authorizing the detention, isolation, quarantine, or conditional release of individuals *reasonably believed* to be infected with a communicable disease in a qualifying stage where they are engaged in interstate travel. There is also authority to deny entry to individuals who are attempting to enter the United States from a foreign country. The authority to implement an intrastate federal quarantine is less clear, although the statutes and regulations provide some authority for HHS and CDC to take some intrastate measures. Limitations on large public gatherings to prevent the spread of disease would test the outer limits of potential quarantine authority.
- ***Enforcement of Federal Quarantine:*** Customs officers and Coast Guard officers must assist in the enforcement of federal quarantines. The Attorney General may also direct the United States Marshals Service and other Department of Justice agencies (*e.g.*, FBI, DEA, ATF) to assist in the enforcement of federal quarantines, and the Marshals Service in turn may deputize other federal law enforcement officers to assist.
- ***Participation of Military Personnel:*** Except in certain narrow circumstances, military personnel may assist but not engage directly in the enforcement of federal quarantines given the limitations imposed by the Posse Comitatus Act and its implementation by the Department of Defense. Despite the general prohibition on the use of military forces for law enforcement, military personnel could be used to (1) support, but not engage directly in, enforcement of state quarantines; (2) protect federal facilities and property (*e.g.*, federal stockpiles of medications); (3) enforce State quarantines through operation of the EFLEA while detailed to a federal law enforcement agency; and (4) restore law and order pursuant to invocation of the Insurrection Act.

- **State and Local Authorities:** The federal government's quarantine powers also must be considered in the context of related state and local authorities. All states have public health laws, issued pursuant to state police power, that allow for some sort of quarantine. Local city and county authorities also may have authority to impose quarantine, primarily through local public health agencies. The federal government is authorized by statute to assist state and local authorities in enforcing their quarantines and health regulations.

### Regulating the Borders

- **Restrictions on Entry:** The President and the Secretary of Homeland Security have authority to prevent the entry into the United States of aliens who have a communicable disease of public health significance, and the Secretary may detain aliens at ports of entry to determine whether they have such a disease. Moreover, when necessary to respond to a National Emergency declared by the President, the Secretary of Homeland Security may eliminate or consolidate ports of entry or close them temporarily.
- **Restrictions on Movement of Livestock:** The Secretary of Homeland Security has authority to deny entry of animals into the United States to constrain the spread of "a pest or disease of livestock." The Secretary of Agriculture has broad authority to quarantine or order the destruction of animals that have entered the United States or moved in interstate commerce as necessary to prevent or limit the spread of such a disease.

### Regulating Transportation

- **Airlines:** Taken together, the FAA and TSA have statutory authority that could be used to close airspace to or redirect a flight that may be carrying a passenger with a disease subject to quarantine, or to prevent an international flight carrying such a passenger from landing. International flights must provide Customs and Border Prevention with passenger manifests that may be shared with other agencies to protect national security.
- **Roads:** There appears to be no statutory authority authorizing federal control of access to or use of roads. Under the Stafford Act, federal authorities could assist state law enforcement in controlling traffic on roads if requested by the state.
- **Railroads and Public Transit:** The Federal Railroad Administration and the Federal Transit Administration have authority to order restrictions in emergency situations for railroads and certain public transportation systems that receive federal funds, respectively.

### Strategic National Stockpile

- The CDC maintains the Strategic National Stockpile of drugs, vaccines, and other medical supplies "for the emergency health security of the United States." The Secretary of Health and Human Services has authority to deploy the Stockpile on his or her own, or at the request of a state governor, or as required by the Secretary of Homeland Security to respond to an actual or potential emergency. The Stockpile could also be used for assistance to a foreign country. If deployed to a state, the Stockpile materials are transferred to the control of state and local authorities after delivery.



U.S. Department of Justice


Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

April 25, 2009

TO: THE ATTORNEY GENERAL

FROM: DAVID J. BARRON   
ACTING ASSISTANT ATTORNEY GENERAL

RE: LEGAL AUTHORITIES FOR USE IN RESPONSE TO AN OUTBREAK OF PANDEMIC INFLUENZA

In connection with reports of the possible spread of an influenza outbreak in Mexico, you have asked me to review the major relevant legal authorities for a federal response to a pandemic influenza emergency. The Executive Branch has substantial authorities, given by statute or regulation to various agencies, that could be used to limit the spread of a pandemic. These include the authority to impose quarantines; control the borders; regulate transportation; and to coordinate with and provide assistance to state and local governments, as well as the private sector and international partners. All or combinations of these authorities can be used to achieve the established goals of the federal response, which are to: (1) stop, slow, or otherwise limit the spread of pandemic to the United States; (2) limit the domestic spread of a pandemic, and mitigate disease, suffering, and death; and (3) sustain infrastructure and mitigate impact to the economy and the functioning of society. *Implementation Plan for the National Strategy for Pandemic Influenza* (May 2006). While individual agencies are in the best position to identify the full range of their relevant legal powers, I set forth below a summary of the major authorities that relate to a response.

**Overall Emergency Authorities**

In any emergency situation, a critical question concerns the assignment of command responsibility. At the agency level, the Secretary of Homeland Security is the principal federal officer for domestic incident management. She is responsible for coordinating federal operations within the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies, including large-scale medical emergencies. See Homeland Security Presidential Directive 5(4). In addition, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 *et seq.*, authorizes the President to issue "major disaster" or "emergency" declarations in response to catastrophes that overwhelm state and local governments, usually at the request of a Governor. A "major disaster" declaration authorizes unlimited federal aid. "Emergency" funds are generally limited to \$5 million to each impacted state. The President has delegated all Stafford Act relief and assistance authority, with the exception of the declaration of the disaster or emergency, to the Secretary of Homeland Security.

## General Public Health Authorities

In the case of a medical emergency, the Secretary of Health and Human Services is responsible for leading all federal public health and medical responses to public health emergencies and incidents. Emergency Support Function #8, Public Health and Medical Services Annex. At the broadest level, the Secretary may declare, after consultation with appropriate public health officials, that a disease or disorder presents a “public health emergency” and may “take such action as may be appropriate” to respond to that emergency consistent with the Secretary’s authorities. *See* Public Health Services Act (PHSA), 42 U.S.C. § 201 *et seq.* That step empowers the Secretary to take a variety of actions, including making grants, entering into contracts, and conducting and supporting investigations into the cause, treatment, or prevention of the disease or disorder. The Secretary’s public health emergency declaration also supplies the predicate for authorizing the emergency use of unapproved products for unapproved uses under section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3, waiving certain HHS regulatory requirements, or (when the President also declares an emergency) waiving certain Medicare, Medicaid, and State Children’s Health Insurance Program provisions.

## Quarantines

Beyond this general emergency authority, the Secretary of Health and Human Services also plays a key role in authorizing quarantines. By statute, the Surgeon General, with the approval of the Secretary, is authorized under 42 U.S.C. § 264 to make and enforce quarantine regulations “necessary to prevent the introduction, transmission, or spread of communicable diseases *from foreign countries into the States or possessions, or from one State or possession into another.*” 42 U.S.C. § 264(a) (emphasis added). The communicable diseases for which a federal quarantine can be imposed must be specified by the President. *See id.* § 264(b).

Currently, the President has designated several communicable diseases, including “influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.” *See* Exec. Order No. 13375, as amended, § 1(c). That description of influenza appears to be broad enough to cover the current situation, and thus the predicate appears to be in place to implement existing federal quarantine regulations. The Secretary of Health and Human Services makes the medical determination whether a particular strain of influenza falls within the Order.

As a general matter, there is no constitutional bar to the exercise of the quarantine power, as courts have long recognized it to be a proper exercise of governmental authority. *See Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905). It should be noted, however, that the current federal quarantine regulations are skeletal and do not provide a process for challenging the imposition of such restrictions on movement, nor do they provide an enforcement mechanism. The Department of Health and Human Services has issued a proposed rule that would provide for due process and more detailed procedures, but those rules have not been finalized. The proposed rule could be implemented as a direct final rule on an emergency basis in order to put a legal framework in place that would be both constitutional and sufficient to avoid endangerment of public health due to the spread of communicable disease. Alternatively,

HHS could provide sufficient constitutional safeguards even if those processes are not set forth formally in regulations.

By statute, federal quarantine regulations may provide for the apprehension and examination of “any individual *reasonably believed* to be infected with a communicable disease in a communicable stage,” so long as the individual either is “moving or about to move from a State to another State,” or is “a probable source of infection to individuals who, while infected with such disease in a communicable stage, will be moving from a State to another State.” 42 U.S.C. § 264(d) (emphasis added). Pursuant to this authority, federal regulations (which appear under the heading “Interstate Quarantine”) at present only generally authorize the detention, isolation, quarantine, or conditional release of individuals for the purpose of preventing the introduction, transmission, and spread of the communicable diseases designated by the President. 42 C.F.R. pt. 70 (2008). When the Director of the Centers for Disease Control and Prevention (CDC) determines that measures taken by state and local health officials are insufficient to prevent the spread of communicable diseases from that state or possession to another state or possession, the Director has broad authority to “take such measures to prevent such spread of the diseases as he/she deems *reasonably necessary*.” *Id.* § 70.2. As a result, the authority to implement an intrastate federal quarantine is less clear, although the statutes and regulations provide some authority for HHS and CDC to take some intrastate measures. Quarantine regulations pertaining to persons entering from foreign countries are found at 42 C.F.R. pt. 71 (2008).

The language of the relevant statutory provisions is sufficiently broad that federal officials should have flexibility to take reasonable steps in containing the spread of a pandemic influenza. The parameters of the federal quarantine authorities, however, are not entirely clear. At one end of the spectrum, quarantine or isolation could be ordered with respect to individuals who were exposed to diseased individuals and who display clear symptoms. At the outer limits, more difficult questions arise, such as whether large gatherings could be cancelled if the circumstances indicated that allowing such an event would endanger health and lives.

Several agencies are authorized to play support roles in a federal quarantine initiative. The Attorney General may direct the United States Marshals Service and other Department of Justice agencies (e.g., FBI, DEA, ATF) to assist in the enforcement of federal quarantines. Upon written request of a Governor, the Attorney General can coordinate and deploy emergency federal law enforcement personnel under the Emergency Federal Law Enforcement Assistance Act (EFLEAA), 42 U.S.C. § 10501 *et seq.* In addition, the Marshals Service may deputize other federal law enforcement officers to assist in the enforcement of federal quarantines. *See, e.g.*, 28 U.S.C. § 566. The Attorney General and the Secretary of Homeland Security have responsibility for implementing Emergency Support Function #13, Public Safety and Security Annex. Customs officers (including Customs Border Control officers and Immigration and Customs Enforcement (ICE) special agents) and Coast Guard officers must assist in the enforcement of federal quarantines. 42 U.S.C. § 268(b).

### *Participation of Military Personnel*

Military personnel may assist but not engage directly in the enforcement of federal quarantines. The Posse Comitatus Act (PCA), as implemented by the Department of Defense, prohibits military forces from engaging in traditional law enforcement activities such as arrest, search, and seizure, except when authorized by statute (such as the Insurrection Act) or by the Constitution. Activities such as conducting security patrols, directing traffic or the movement of crowds, detaining persons violating the law, and enforcing quarantines generally are viewed as falling within the PCA's prohibition against military forces engaging in law enforcement activities. Despite the general prohibition on the use of military forces for law enforcement, military officers commanding seacoast forts and stations are specifically required, at the direction of the Secretary of HHS, to aid in executing state quarantines and other health laws "according to their . . . powers." 42 U.S.C. § 97. In addition, military personnel could be used to (1) support, but not engage directly in, enforcement of state quarantines; (2) protect federal facilities and property (e.g., federal stockpiles of medications); (3) enforce State quarantines through operation of the EFLEAA while detailed to a federal law enforcement agency; and (4) restore law and order pursuant to invocation of the Insurrection Act.

### *State and Local Authorities*

The federal government's quarantine powers also must be considered in the context of related state and local authorities. All states have public health laws, issued pursuant to state police power, that allow for some sort of quarantine. Local authorities (city and/or county) also may have authority to impose quarantines, primarily through local public health agencies. Broadly written laws might be used to support local containment measures such as closing schools. Indeed, in their pandemic influenza plans, the great majority of states identify school closure as a potential mitigation strategy. The federal government may assist state and local authorities in enforcing their quarantines and health regulations. *See, e.g.*, 42 U.S.C. § 243(a) (authorizing the Secretary of HHS to cooperate with state and local authorities in enforcing their quarantines and other health regulations); *id.* §§ 5170, 5192-5193, 5195a (authorizing, in disaster and emergency situations, federal assistance for state and local public health measures); 10 U.S.C. §§ 331-334.

Legal issues may arise if a state attempts to close its borders to individuals who seek to enter, especially from states in which there has been a flu outbreak. In addition to questions concerning the state's authority to take such action, additional issues concern the federal government's authority to countermand such a state decision. The federal government's strongest argument for requiring a neighboring state to reopen its borders and admit uncontaminated individuals is the necessity to execute a federal law or perform a federal function. Depending upon the circumstances, it might be possible to seek a declaratory judgment or injunction in federal court. In addition, if necessary, under the Insurrection Act, if the President found that state authorities attempting to enforce a roadblock prohibited federal authorities from performing a federal function, thereby "mak[ing] it impracticable to enforce the laws of the United States," 10 U.S.C. § 332, or obstructing the execution of federal law, *id.* § 333, he may be able to invoke the Insurrection Act and use the federalized National Guard and members of the Armed Forces to enforce those federal laws.

Special consideration should be given to a situation in which the state enforces a quarantine at the border using the state National Guard under the Governor's control. The President would have some options for relieving those National Guard units from their state enforcement duties, and should consult the Attorney General if that circumstance arises.

### Regulating the Borders

Particularly in the present context, the federal response will necessarily require regulation of the borders and ports of entry.

The President and the Secretary of Homeland Security have authorities to prevent the entry into the United States of certain aliens that might be used in response to an outbreak of pandemic influenza. Through the issuance of a proclamation, the President, "[w]henever [he] finds that the entry of any aliens or any class of aliens into the United States would be detrimental to the interests of the United States," may "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f). The President could use this authority to restrict the entry of aliens to prevent the spread of an influenza virus.

The Department of Homeland Security has authority to find inadmissible any alien "who is determined (in accordance with the regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance." *Id.* § 1182(a)(1). Pandemic influenza, by virtue of having been identified as a "communicable disease" by the President, would be considered a "disease of public health significance." 42 C.F.R. 34.2(b)(2); Exec. Order No. 13925, as amended. The Secretary of Homeland Security may detain aliens at ports of entry for purposes of determining whether such aliens are inadmissible by reason of having a communicable disease of public health significance under section 1182(a)(1), "or whenever the [Secretary] has received information showing that any aliens are coming from a country or have embarked at a place where any of such diseases are prevalent or epidemic." 8 U.S.C. § 1222(a). The detention authority lasts for a "sufficient time to enable immigration and medical officers to subject such aliens to observation and an examination sufficient to determine whether or not they belong to inadmissible classes." *Id.* The Surgeon General also may exclude certain persons from the United States under limited circumstances. *See* 42 U.S.C. § 265 (authority "to prohibit, in whole or in part, the introduction of persons and property" when the Surgeon General determines that there is "serious danger" of introduction of a communicable disease from a foreign country).

The Secretary of Homeland Security has broad authority to exercise control over ports of entry that might be available in responding to a pandemic influenza outbreak. When necessary to respond to a "national emergency" declared by the President under the National Emergencies Act, 50 U.S.C. § 1601 *et seq.*, or a "a specific threat to human life or national interests," the Secretary may (subject to a congressional notice requirement) "[e]liminate, consolidate, or relocate any . . . port of entry of the Customs Service" or "[t]ake any other action that may be necessary to respond directly to the national emergency or specific threat." 19 U.S.C. § 1318(b)(1). Also, the Commissioner of Customs and Border Patrol is authorized, "when necessary to respond to a specific threat to human life or national interests," "to close



temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat." *Id.* § 1318(b)(2).

Assuming ports of entry are open, customs officers have general authority pursuant to customs and immigration laws to conduct routine examinations of persons, conveyances, cargo, and merchandise coming into the United States, *see, e.g.*, 19 U.S.C. §§ 482, 1461, 1496, 1589a, 1499, 1581, 1582, 1595a; 8 U.S.C. §§ 1157, 1357, and to seize and forfeit any items sought to be imported in violation of United States law, *see* 18 U.S.C. § 545; 19 U.S.C. § 1595a.

### **Restrictions on the Movement of Livestock**

The Secretary of Homeland Security has specific authorities with respect to the entry of animals into the United States that may be used to contain the spread of "a pest or disease of livestock" that might be used during an outbreak of pandemic influenza. *See* 7 U.S.C. § 8302(10) (defining "livestock" as any farm-raised animal). For example, under the Animal Health Protection Act, the Secretary may, among other things, "prohibit or restrict" the importation or entry into the United States of any animal, if such measures are "necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock." *Id.* § 8303(a); 6 U.S.C. § 231(a). However, DHS does not have authority to carry out quarantine activities, which are performed by the Secretary of Agriculture, *see* 6 U.S.C. § 231(c). The Secretary of Agriculture may order the "destruction or removal of any animal from the United States" as "necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock," 7 U.S.C. § 8303(c), and also has authority to regulate animals within the United States in order to contain a livestock pest or disease. *See* 7 U.S.C. § 8305. Even more broadly, the Secretary "may hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action" with respect to any animal that is moving or has been moved in interstate commerce and that the Secretary has reason to believe may carry or have been exposed to any pest or disease of livestock. *Id.* § 8306(a).

### **Transportation**

The regulation of transportation channels is obviously of critical importance in responding to a pandemic. The Secretary of Transportation has general coordinating authority under Emergency Support Function #1, Transportation Annex. A variety of federal agencies have specific responsibilities in the transportation area.

#### *Airlines*

The Federal Aviation Administration (FAA) is the lead agency responsible for aviation safety regulation and oversight and has authority to restrict access to airports and designated portions of the national airspace in response to emergency conditions on the ground. The FAA Administrator has the authority to stop, redirect, or exclude any aircraft in the navigable airspace of the United States for public safety considerations. *See* 49 U.S.C. §§ 40101(d), 40103(b)(2)(B), 44701. If the FAA Administrator "is of the opinion that an emergency exists related to safety in air commerce and requires immediate action," he has authority to "prescribe regulations and issue orders immediately to meet the emergency." *Id.* § 46105(c). FAA

interprets these provisions as including the authority to close airspace to, or to redirect, a flight that may be transporting passengers with a quarantinable disease.

The Transportation Security Administration, too, has statutory authority to cancel a flight or a series of flights or prevent planes from landing if the TSA Assistant Secretary decides "that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew." *Id.* § 44905(b). If the TSA Assistant Secretary "determines that a regulation or security directive must be issued immediately in order to protect transportation security the [Assistant Secretary] shall issue the regulation or security directive without providing notice or an opportunity for comment." *Id.* § 114(l)(2)(A). TSA interprets these provisions to provide authority to prevent an international flight from landing in the United States if it is determined that a flight may be transporting persons with a quarantinable disease.

In addition to regulating the flights themselves, agencies also may wish to obtain access to airline manifests for purposes of tracking individuals. Each commercial vessel or aircraft transporting persons to U.S. seaports or airports from outside the United States is required to provide to a U.S. border officer "manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port." 8 U.S.C. § 1221. By regulation, vessels and aircraft arriving and departing the United States must transmit an electronic passenger manifest to Customs and Border Protection. 19 C.F.R. §§ 4.7b, 122.49a, 122.75a. Information contained in electronic manifests "may, upon request, be shared with other Federal agencies for the purpose of protecting national security." *Id.* In the case of a pandemic influenza outbreak, the Centers for Disease Control would coordinate with DHS to obtain contact information on passengers who pose health risks.

### *Roads*

There appears to be no statutory authority authorizing federal control of access to or use of roads. With minor exceptions, highways in the United States are neither owned nor operated by the federal government. The Federal Highway Administration has authority to restrict the movement of vehicles only to address the safety problems of the vehicles themselves. Numerous provisions in the Stafford Act authorize federal assistance to state and local authorities. While none of these provisions specifically identifies controlling access to roads as a type of authorized assistance, the more general terms used, *e.g.*, "any work or services essential to saving lives and protecting and preserving property or public health and safety," 42 U.S.C. § 5170b(a)(3), would seem to cover, if necessary, controlling traffic on roads. Thus, to the extent that state law supplies the basic legal authority to control access to and use of roads, federal personnel could, if requested by state authorities, participate in such efforts.

### *Railroads and Public Transit*

The federal agency responsible for railroad safety, the Federal Railroad Administration, has authority to order restrictions or prohibitions on railroad carriers that are "necessary" to abate an "emergency situation involving a hazard of death, personal injury, or significant harm to the environment." 49 U.S.C. § 20104(a)(1); 49 C.F.R. § 1.49(m) (delegating authority of Secretary of Transportation to Federal Railroad Administrator). The Federal Transit Administration has authority for "purposes of national defense or in the event of a national or regional emergency"

to regulate the “operation, routes, [and] schedules” of a public transportation system that receives federal funding under chapter 53 of title 49 of the U.S. Code. 49 U.S.C. § 5334(b)(1); 49 C.F.R. § 1.51(g) (delegating authority of Secretary of Transportation to the Federal Transit Administrator); 49 U.S.C. § 5302(a)(10) (defining public transportation).

### **Strategic National Stockpile**

The Strategic National Stockpile (SNS) was established at the Centers for Disease Control and Prevention to provide an inventory of drugs, vaccines, and other medical products and supplies “to provide *for the emergency health security of the United States*” in the event of a public health emergency. 42 U.S.C. § 247d-6b(a)(1) (emphasis added). During a national emergency, state, local, and private stocks of medicines and supplies will be depleted quickly. The mission of the SNS is to provide capability to re-supply large quantities of essential medicines and supplies to states and communities during an emergency within twelve hours of the federal decision to deploy. Depending on the circumstances of an outbreak in a foreign country, providing for the emergency health security of the United States could include giving stockpiled materials to that foreign country. Presently, there are no international agreements in place that would require any such assistance from the stockpile.

The authority to deploy the SNS resides with the Secretary of Health and Human Services (HHS). The Public Health Service Act provides that the HHS Secretary shall deploy the stockpile (1) “as required by the Secretary of Homeland Security to respond to an actual or potential emergency,” or (2) “at the discretion of the [HHS] Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety.” *Id.* § 247d-6b(a)(2)(F), (G). During a crisis, state governors provide a formal request for SNS deployment to the CDC Director, who is responsible for deciding whether to approve the request and determining which portions of the SNS should be deployed. In addition, the HHS Secretary may choose to deploy the SNS with or without a formal request from a state governor.

Federal officials guarantee the initial delivery of materials from the SNS within twelve hours following the decision to deploy. Once the materials arrive at the designated receiving and storage site, HHS will transfer authority for the SNS material to state and local authorities. Federal personnel may remain on site to assist and advise state and local officials in putting the SNS assets to effective use.

Please let us know if we can be of further assistance.