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Assistance

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

Source: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

Subpart A—Purpose

§ 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials, services, and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials, equipment, and services in order to assure domestic energy supplies for national defense needs.

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms “national defense” and “defense” as used in the Defense Production Act includes “emergency preparedness activities” conducted pursuant to Title VI of the Stafford Act. The definition of “national defense” in section 702(14) of the Defense Production Act provides that this term includes “emergency preparedness activities” conducted pursuant to Title VI of the Stafford Act and “critical infrastructure protection and restoration.”

(d) The Defense Priorities and Allocations System (DPAS) regulation implements the priorities and allocations authority of the Defense Production Act and as this authority pertains to Title VI of the Stafford Act, and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS ensures the timely availability of industrial resources for approved programs and provides an operating system to support rapid industrial response to a national emergency.

(e) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B—Overview. The full text of the DPAS is found in subparts D through L.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998; 71 FR 39527, July 13, 2006]

Subpart B—Overview

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are “approved programs.” A complete list of currently approved programs is provided at Schedule I to this part.

(b) The Department of Commerce administers the DPAS to ensure the timely delivery of industrial items to meet approved program requirements.

(c) Commerce has delegated authorities to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998; 71 FR 39527, July 13, 2006]

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over

DO rated orders. Program identification symbols indicate which approved program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

§ 700.4 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the allocation of critical and scarce materials and facilities.

[63 FR 31921, June 11, 1998]

§ 700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided

to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

§ 700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

§ 700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act and the Selective Service Act and related statutes. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998]

Subpart C—Definitions

§ 700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act (excepting the definition of “industrial resources”) and Section 602(a) of the Stafford Act, the following definitions pertain to all sections of this part:

Approved program. A program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

Defense Production Act. the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.).

Industrial resources —all materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 12919. This term also includes the term “item” as defined and used in this part.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and operating supplies (MRO):

(a) Maintenance is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) Repair is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) Operating supplies are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Official action. An action taken by Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person —any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or agency thereof, delegated authority as provided in this part.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in excess of one year, and the potential for maintaining its integrity as a capital item.

Rated order. A prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this regulation.

Selective Service Act and related statutes —Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

Set-aside. The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

Stafford Act —Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195 et seq.).

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31921, June 11, 1998; 71 FR 39528, July 13, 2006]

Subpart D—Industrial Priorities

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to industrial resources have been delegated to the Secretary of Commerce under Executive Order 12919 of June 3, 1994 (59 FR 29525). The priorities authorities of the President under the Selective Service Act and related statutes with respect to industrial resources have also been delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079).

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Strategic Industries and Economic Security. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for approved programs.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998; 71 FR 39528, July 13, 2006]

§ 700.11 Priority ratings.

(a) Levels of priority. (1) There are two levels of priority established by this regulation, identified by the rating symbols “DO” and “DX”.

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see §700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see §700.62.)

(b) Program identification symbols. Program identification symbols indicate which approved program is being supported by a rated order. The list of approved programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) Priority ratings . A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, C2, or N1. Thus,

a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998; 71 FR 39528, July 13, 2006]

§ 700.12 Elements of a rated order.

Each rated order must include:

- (a) The appropriate priority rating (e.g. DO-A1, DX-A4, DO-H1);
 - (b) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. A “requirements contract”, “basic ordering agreement”, “prime vendor contract”, or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders, such as “calls”, “requisitions”, and “delivery orders”. These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;
 - (c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and
 - (d) A statement that reads in substance:
This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).
- [49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.13 Acceptance and rejection of rated orders.

- (a) Mandatory acceptance. (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.
(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.
- (b) Mandatory rejection. Unless otherwise directed by Commerce:
(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and

offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) Optional rejection. Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is obligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act or the Selective Service Act and related statutes [See

§700.75].

(d) Customer notification requirements. (1) A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy), or in electronic format, within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must also provide the reasons for the rejection, pursuant to paragraphs (b) and (c) of this section, in writing (hard copy) or electronic format.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days. (The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under OMB control number 0694-0053)

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998; 70 FR 10864, Mar. 7, 2005]

§ 700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) Conflicting rated orders. (1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person shall give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in §§700.50 through 700.54. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in §700.13(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in §700.17(b).
[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31922, June 11, 1998]

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce. For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

- (1) An official action of the Department of Commerce; or
- (2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of §700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or is changed or

cancelled, all suppliers must be promptly notified in writing.

§ 700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders.

However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1).

(d) Combining rated and unrated orders. (1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by §700.12, are included on the order with the statement required in §700.12(d) modified to read in substance:

This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700) only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in §700.13 and give preferential treatment only to the

rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under §700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than \$50,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold (see FAR 2.101), whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998]

§ 700.18 Limitations on placing rated orders.

(a) General limitations. (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, except as specifically authorized by Commerce (see §700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see §700.51.]

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) Jurisdiction limitations . (1) The priorities and allocations

authority for certain items have been delegated under Executive Orders 12919 and 12742, other executive order, or Interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to these items which include:

- (i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture) (The Department of Agriculture and the Department of Commerce have agreed that the Department of Defense may place rated contracts and orders for food resources in support of troops, including but not limited to, meals ready to eat (MREs), “tray-packs” (T-rations), A-rations, and B-rations);
 - (ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);
 - (iii) Health resources (Department of Health and Human Services);
 - (iv) All forms of civil transportation (Department of Transportation);
 - (v) Water resources (Department of Defense/U.S. Army Corps of Engineers);
- and
- (vi) Communications services (National Communications System under Executive Order 12472 of April 3, 1984).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy and Agriculture over certain specific items included in the categories listed above has been clarified by Interagency Memoranda of Understanding.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Copper raw materials
Crushed stone
Gravel
Sand
Scrap
Slag
Steam heat, central
Waste paper

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998; 71 FR 39528, July 13, 2006]

Subpart E—Industrial Priorities for Energy Programs

§ 700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which

maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) On receipt of the application, the Department of Energy will:

- (1) Determine if the project maximizes domestic energy supplies; and
- (2) Find whether the materials, equipment, or services involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

- (i) Value and volume of material or equipment shipments;
- (ii) Consumption of material and equipment;
- (iii) Volume and market trends of imports and exports;
- (iv) Domestic and foreign sources of supply;
- (v) Normal levels of inventories;
- (vi) Rates of capacity utilization;
- (vii) Volume of new orders; and
- (viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of materials, equipment, or services are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of approved programs to support the

maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31923, June 11, 1998; 73 FR 34, Jan. 2, 2008]

Subpart F—National Emergency Preparedness and Critical Items

Source: 63 FR 31923, June 11, 1998, unless otherwise noted.

§ 700.30 Priorities and allocations in a national emergency.

(a) In the event of a national emergency, special rules may be established as needed to supplement this part, thus ensuring rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent national defense requirements, including domestic emergency preparedness requirements, of approved programs.

(1) Emergency official actions. (i) As needed, this part may be supplemented to include additional definitions to cover civilian emergency preparedness industrial items, support for essential civilian programs, and provisions for the taking of certain emergency official actions under sections §§700.60 through 700.63.

(ii) Emergency official actions may include:

(A) Controlling inventories of critical and scarce defense and/or emergency preparedness items;

(B) Restricting the purchase, use, or distribution of critical and scarce defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

(C) Converting the production or distribution of non-essential items to the production or distribution of critical and scarce defense and/or emergency preparedness items.

(2) Allocation of critical and scarce items and facilities. (i) As needed, this part may be supplemented to establish special rules for the allocation of scarce and critical items and facilities to ensure the timely availability of these items and facilities for approved programs, and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items. These rules may provide for the allocation of individual items or they may be broad enough to direct general industrial activity as required in support of emergency requirements.

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type

of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see §700.31).

(3) In the event that certain critical items become scarce, and approved program requirements for these items cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, Commerce may establish special rules under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

(b) [Reserved]

[63 FR 31923, June 11, 1998, as amended at 71 FR 39528, July 13, 2006]

§ 700.31 Metalworking machines.

(a) “Metalworking machines” include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of \$2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines

Boring machines

Broaching machines

Drilling and tapping machines

Electrical discharge, ultrasonic and chemical erosion machines

Forging machinery and hammers

Gear cutting and finishing machines

Grinding machines

Hydraulic and pneumatic presses, power driven

Machining centers and way-type machines

Manual presses

Mechanical presses, power driven

Milling machines

Miscellaneous machine tools

Miscellaneous secondary metal forming and cutting machines

Planers and shapers

Polishing, lapping, boring, and finishing machines

Punching and shearing machines

Riveting machines

Saws and filing machines

Turning machines, lathes, including automatic

Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of

machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date. [49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989. Further redesignated at 63 FR 31924, June 11, 1998]

Subpart G [Reserved]

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form BIS-999 (OMB control number 0694-0057) to the local contract administration representative. Form BIS-999 may be obtained from the Delegate Agency representative or from the Department of Commerce. A sample Form BIS-999 is attached at Appendix I. [49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

- (1) Production or construction equipment;
- (2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing plant facilities.

(b) Rating authority for production or construction equipment. (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (e.g., Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) Rating authority in advance of a rated prime contract. (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is

cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

- (1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or
- (2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

- (1) Ensuring that rated orders receive preferential treatment by suppliers;
- (2) Resolving production or delivery conflicts between various rated orders;
- (3) Assisting in placing rated orders with suppliers;
- (4) Verifying the urgency of rated orders; and
- (5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, i.e., the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

- (a) There is an urgent need for the item; and
- (b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance may not be provided include situations when a person is attempting to:

- (a) Secure a price advantage;
- (b) Obtain delivery prior to the time required to fill a rated order;
- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.55 Assistance programs with Canada and other nations.

- (a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of

approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) Canada. (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the U.S.-Canadian Statement of Principles for Economic Cooperation (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this regulation.

(3) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada, for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; telephone: (819) 956-6825; Fax: (819) 956-7827.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the U.S. Department of Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form BIS-999. Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

(c) Foreign nations. (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should submit a request for such assistance or rating authority to the Office of the Deputy Under Secretary of Defense (Industrial Policy): Office of the Deputy Under Secretary of Defense (Industrial Policy), 3330 Defense Pentagon, Washington, DC 20301; telephone: (703) 697-0051; Fax:

(703) 695-4277.

(i) If the end product is being acquired by a U.S. government agency, the request should be submitted to the Office of the Deputy Under Secretary of Defense (Industrial Policy) through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation, the request must be sponsored prior to its submission to the Office of the Deputy Under Secretary of Defense (Industrial Policy) by the government of the foreign nation that will use the end product.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

(d) Requesting assistance in Italy, The Netherlands, Sweden, and the United Kingdom.

(1) The U.S. Department of Defense has entered into bilateral security of supply arrangements with Italy, The Netherlands, Sweden, and the United Kingdom that allow the U.S. Department of Defense to request the priority delivery for U.S. Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Office of the Deputy Under Secretary of Defense (Industrial Policy) for assistance. Persons in Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with §700.55(c)(1).

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998; 71 FR 39528, July 13, 2006; 71 FR 54904, Sept. 20, 2006]

Subpart I—Official Actions

§ 700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in §700.71(c).

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 71 FR 39528, July 13, 2006]

§ 700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific

priority rating authority that:

- (1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or
 - (2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.
- (b) To request priority rating authority, see §700.51.

§ 700.62 Directives.

- (a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.
- (b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.
- (c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§ 700.63 Letters of Understanding.

- (a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).
- (b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J—Compliance

§ 700.70 General provisions.

- (a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action. Such actions include audits, investigations, or other inquiries.
- (b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.
- (c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in §700.74 of this regulation.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) Administrative Subpoenas. An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) Demand for Information. A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(3) Inspection Authorizations. An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative

Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, in consultation with the Chief Counsel for Industry and Security, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998; 67 FR 45633, July 10, 2002; 71 FR 39528, July 13, 2006]

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willfull violation of the Defense Production Act, this regulation, or an official action.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes is a \$50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example,

sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

§ 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

Subpart K—Adjustments, Exceptions, and Appeals

§ 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not

relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security.

(d) A decision of the Office of Strategic Industries and Economic Security under this section may be appealed to the Assistant Secretary for Export Administration, U.S. Department of Commerce. (For information on the appeal procedure, see §700.81.)

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, 31925, June 11, 1998]

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under §700.80, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Export Administration.

(e) When a hearing is granted, the Assistant Secretary for Export Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Export Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this

regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Export Administration.

(h) The decision of the Assistant Secretary for Export Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision. [49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31925, June 11, 1998; 71 FR 39528, July 13, 2006]

Subpart L—Miscellaneous Provisions

§ 700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 700.91 Records and reports.

- (a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation (OMB control number 0694–0053) or an official action.
- (b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.
- (c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in §700.71.
- (d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act and related statutes, and this regulation.
- (e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, 31925, June 11, 1998]

§ 700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or liability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 482-3634 or fax: (202) 482-5650.

[71 FR 39528, July 13, 2006]

Schedule I to Part 700—Approved Programs and Delegate Agencies

The programs listed in this schedule have been approved for priorities and allocations support under this part. They have equal preferential status. The Department of Commerce has authorized the Delegate Agencies to use this part in support of those programs assigned to them, as indicated below.

Program identification symbol Approved program Delegate agency
Defense programs:

A1AircraftDepartment of Defense.1
A2Missiles Do.
A3Ships Do.
A4Tank—Automotive Do.
A5Weapons Do.
A6Ammunition Do.
A7Electronic and communications equipment Do.
B1Military building supplies Do.
B8Production equipment (for defense contractor's account) Do.
B9Production equipment (Government owned) Do.
C1Food resources (combat rations) Do.
C2Department of Defense construction Do.
C3Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities Do.
C9Miscellaneous Do.
International defense programs:
Canada:
D1Canadian military programsDepartment of Commerce.
D2Canadian production and construction Do.
D3Canadian atomic energy program Do.
Other Foreign Nations:
G1Certain munitions items purchased by foreign governments through domestic commercial channels for exportDepartment of Commerce.
G2Certain direct defense needs of foreign governments other than Canada Do.
G3Foreign nations (other than Canada) production and construction Do.
Co-Production:
J1F-16 Co-Production ProgramDepartments of Commerce and Defense.
Atomic energy programs:
E1ConstructionDepartment of Energy.
E2Operations—including maintenance, repair, and operating supplies (MRO) Do.
E3Privately owned facilities Do.
Domestic energy programs:
F1Exploration, production, refining, and transportationDepartment of Energy.
F2Conservation Do.
F3Construction, repair, and maintenance Do.
Other defense, energy, and related programs:
H1Certain combined orders (see section 700.17(c))Department of Commerce.
H5Private domestic production Do.
H6Private domestic construction Do.
H7Maintenance, repair, and operating supplies (MRO) Do.
H8Designated Programs Do.

K1Federal supply itemsGeneral Services Administration.

Homeland security programs:

N1Federal emergency preparedness, mitigation, response, and recoveryDepartment of Homeland Security.

N2State, local, tribal government emergency preparedness, mitigation, response, and recovery Do.

N3Intelligence and warning systems Do.

N4Border and transportation security Do.

N5Domestic counter-terrorism, including law enforcement Do.

N6Chemical, biological, radiological, and nuclear countermeasures Do.

N7Critical infrastructure protection and restoration Do.

N8Miscellaneous Do.

1Department of Defense includes: The Office of the Secretary of Defense, the Military Departments, the Joint Staff, the Combatant Commands, the Defense Agencies, the Defense Field Activities, all other organizational entities in the Department of Defense, and, for purposes of this regulation, the Central Intelligence Agency and the National Aeronautics and Space Administration as Associated Agencies.

[63 FR 31925, June 11, 1998, as amended at 71 FR 39529, July 13, 2006; 72 FR 3944, Jan. 29, 2007]

Appendix I to Part 700—Form BIS-999—Request for Special Priorities Assistance

[71 FR 39529, July 13, 2006]