

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 2006 United States Area Navigation Routes.*

\* \* \* \* \*

**Q-8 ANC to GAL [Revised]**

GAL VOR/DME  
(Lat. 64°44'17" N., long. 156°46'38" W.)  
ANC VOR/DME  
(Lat. 61°09'03" N., long. 150°12'24" W.)  
\* \* \* \* \*

*Paragraph 6011 United States Area Navigation Routes.*

\* \* \* \* \*

**T-227 SYA to SCC [Modified]**

SYA VORTAC  
(Lat. 52°43'06" N., long. 174°03'44" E.)  
JANNT WP  
(Lat. 52°04'18" N., long. 178°15'37" W.)  
BAERE WP  
(Lat. 52°12'12" N., long. 176°08'09" W.)  
ALEUT FIX  
(Lat. 54°14'17" N., long. 166°32'52" W.)  
MORDI FIX  
(Lat. 54°52'50" N., long. 165°03'15" W.)  
GENFU FIX  
(Lat. 55°23'19" N., long. 163°06'22" W.)  
BINAL FIX  
(Lat. 55°46'00" N., long. 161°59'56" W.)  
PDN NDB/DME  
(Lat. 56°57'15" N., long. 158°38'51" W.)  
BATTY FIX  
(Lat. 59°03'57" N., long. 155°04'42" W.)  
AMOTT FIX  
(Lat. 60°53'56" N., long. 151°21'46" W.)  
ANC VOR/DME  
(Lat. 61°09'03" N., long. 150°12'24" W.)  
FAI VORTAC  
(Lat. 64°48'00" N., long. 148°00'43" W.)  
SCC VOR/DME  
(Lat. 70°11'57" N., long. 148°24'58" W.)  
\* \* \* \* \*

**T-266 CGL to ANN [Modified]**

CGL NDB  
(Lat. 58°21'33" N., long. 134°41'58" W.)  
FPN NDB  
(Lat. 56°47'32" N., long. 132°49'16" W.)  
ANN VOR/DME  
(Lat. 55°03'37" N., long. 131°34'42" W.)  
\* \* \* \* \*

**T-267 OME to OTZ [New]**

OME VOR/DME

(Lat. 64°29'06" N., long. 165°15'11" W.)  
BALIN FIX  
(Lat. 64°33'55" N., long. 161°34'32" W.)  
OTZ VOR/DME  
(Lat. 66°53'09" N., long. 162°32'24" W.)  
\* \* \* \* \*

**T-271 CDB to AMOTT [New]**

CDB VORTAC  
(Lat. 55°16'03" N., long. 162°46'27" W.)  
BINAL FIX  
(Lat. 55°46'00" N., long. 161°59'56" W.)  
AKN VORTAC  
(Lat. 58°43'29" N., long. 156°45'08" W.)  
AMOTT FIX  
(Lat. 60°53'56" N., long. 151°21'46" W.)  
\* \* \* \* \*

**T-273 FAI to ROCES [Modified]**

FAI VORTAC  
(Lat. 64°48'00" N., long. 148°00'43" W.)  
AYKID FIX  
(Lat. 65°50'58" N., long. 147°16'34" W.)  
TUVVO FIX  
(Lat. 67°37'20" N., long. 146°04'49" W.)  
ROCES WP  
(Lat. 70°08'34" N., long. 144°08'16" W.)

Issued in Washington, DC, May 28, 2010.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. 2010–13596 Filed 6–4–10; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 700**

**[Docket No. 0912311453–0016–01]**

**RIN 0694–AE81**

**Revisions to Defense Priorities and Allocations System Regulations**

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would reorganize and clarify existing standards and procedures by which the Bureau of Industry and Security (BIS) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. This rule also sets new standards and procedures by which BIS may allocate materials, services and facilities to promote the national defense. BIS is publishing this rule to comply with a requirement of the Defense Production Act Reauthorization of 2009 to publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services and facilities to promote the national defense.

**DATES:** Comments must be received by July 7, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE81, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- By e-mail directly to [bis@publiccomments.bis.doc.gov](mailto:bis@publiccomments.bis.doc.gov). Include RIN 0694–AE81 in the subject line.

- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** John Isbell, Director (Acting), Defense Programs Division, Office of Strategic Industries and Economic Security, Bureau of Industry and Security; (202) 482–8229, [jisbell@bis.doc.gov](mailto:jisbell@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

This rule updates and expands 15 CFR part 700, the Bureau of Industry and Security's (BIS) Defense Priorities and Allocations System (DPAS) regulations. The DPAS regulations implement BIS' administration of priorities and allocations actions involving industrial resources. BIS administers the DPAS pursuant to authority under Title I of the Defense Production Act (50 U.S.C. app. 2071 *et seq.*) (DPA) as delegated by Executive Order 12919 (June 3, 1994). The DPAS has two principal components: Priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term "national defense" is defined broadly and can include critical infrastructure protection and restoration, emergency preparedness, and recovery from natural disasters. BIS has extensive experience using its prioritization authorities. However, BIS has not used its allocations authorities in more than fifty years.

On September 30, 2009, the Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, 123 Stat. 2006, September 30, 2009) (DPA) was enacted. That act requires that within 270 days of its enactment (that is, by June 20, 2010), all agencies to which the

President has delegated priorities and allocations authority under Title I of the DPA must publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and nonemergency situations. That act also required all such agencies to consult “as appropriate and to the extent practicable to develop a consistent and unified Federal priorities and allocations system.” (123 Stat. 2006, at 2009). This rule is one of several rules to be published to implement the provisions of the DPAR. The final rules of the agencies with DPAR authorities, which are the Departments of Commerce, Energy, Transportation, Health and Human Services, Defense, and Agriculture, will comprise the Federal Priorities and Allocations System.

BIS is publishing this proposed rule as the initial rulemaking stage in compliance with the provision of the DPAR noted above. BIS believes that its existing rules regarding priorities satisfy the DPAR’s requirement that agencies have standards and procedures in place to implement the DPA’s authorities. However, in the interest of promoting a unified priorities and allocations system, and to update many of the existing DPAS procedures, BIS is setting forth in this proposed rule changes that will clarify and reorganize the DPAS to make it consistent with the regulations issued by other agencies, and to make it easier to understand. Additionally, although allocations provisions were previously contained in the DPAS, this proposed rule expands those provisions to clearly set forth the procedures to be followed for allocations actions. The specific changes proposed by this rule are more fully described below.

### Analysis of the Proposed Priorities and Allocations System

#### Subpart A

Proposed Subpart A would be titled “Purpose, Overview and Definitions” and would reflect all three concepts.

Proposed § 700.1 would state the purpose of the DPAS in general terms and would largely restate information that appears at 15 CFR 700.1 in the existing regulations. However, extensive language about the source of BIS’s legal authority would not be incorporated into the proposed § 700.1 on the grounds that such language is not regulatory in nature. BIS believes that the language regarding the DPAS’ purpose would be clearer if it is not submerged in extensive discussions of legal authority, particularly where those discussions have no legal effect.

Proposed § 700.2 would provide an overview of the DPAS program. This section would incorporate much of the discussion that currently appears in Subpart B of the existing regulations, but would describe briefly all aspects of the DPAS, eliminating the need for the more extensive descriptions found in §§ 700.3 through 700.7 of the existing regulations.

The “Definitions” section, which appears in § 700.8 in Subpart C of the current regulations, would appear in proposed § 700.3 in Subpart A with the following modifications. Proposed § 700.3 would state that the definitions therein apply to all of part 700 unless otherwise specified in a particular definition. The reference to the definitions found in the DPA and in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) that appear in the current regulations would be removed and all relevant definitions would appear in full in § 700.3, thereby eliminating the need to consult statutes for definitions. Although references to these statutes are being removed, the definitions contained in proposed § 700.3 would be consistent with those set forth in the statutes.

New definitions would be added for the following terms: *Allocation, allocation authority, allocation order, allotment, critical infrastructure, prioritization directive, allocation directive, emergency preparedness, national defense, priorities authority, priority rating, priority performance, program identification symbols, resource agency, and short supply item.* These new definitions are needed to promote clarity of meaning, to remove the need to consult authorizing statutes for definitions, to implement the new provisions regarding allocations, and to develop a consistent and unified Federal priorities and allocations system.

The definition of the term “MRO” would be revised to replace the term “Maintenance, and repair and operating supplies” with the term “Maintenance, repair and/or operating supplies.” For years, BIS has interpreted the term MRO to apply to maintenance, to repair, to operating supplies, to any combination of two of the three, or to all three. BIS is proposing to revise the language because it believes that the proposed language more clearly expresses the meaning that BIS has applied for years. In other respects, the definition is unchanged.

The definition of the term *Person* would be expanded to include international organizations in order to clarify the scope of the entities subject

to or eligible to be a recipient of authority (delegated or direct) as provided in this part. BIS proposes to modify the definition to clarify that international organizations are among the entities eligible to request priority ratings to obtain items in the United States in support of approved programs. This proposed change would codify existing agency practice.

The definition of the term “*Production equipment*” would be changed to emphasize that the characteristics of the equipment that give it a useful life of more than one year (as distinct from the actual amount of time that it actually will be used) is a relevant factor in determining whether a piece of equipment is production equipment. The wording of the other factors in the definition, unit acquisition cost in excess of \$2,500 and use in producing materials or furnishing services, remains unchanged.

Finally, the definition of the term *Set-aside*, which appears as a parenthetical in § 700.30 of the existing regulations, would be revised to more clearly state what is required of a person who is issued a set-aside. The current definition uses outdated language that makes the meaning of the term unclear.

#### Subpart B

Proposed Subpart B would be based largely on language that appears in Subparts D, I and L of the existing regulations and would be titled “Industrial Priorities and Allocations,” reflecting the fact that the subpart will address certain matters that are common to both priorities and to allocations as opposed to the current title of subpart D “Industrial Priorities,” which reflects a narrower scope.

Proposed § 700.10, “Authority,” would incorporate language that appears in the existing regulations at § 700.10 of existing Subpart D, however the existing language would be revised to describe more fully the President’s delegations to the Department of Commerce and to other agencies that have roles in the Federal priorities and allocation system. It would also describe, in general terms, the items subject to each agency’s jurisdiction and note that the Department of Commerce has delegated certain authorities to other agencies. BIS is proposing this change to facilitate public understanding of the role that each delegate agency plays in the overall priorities and allocations system.

Proposed § 700.11, “Priority ratings,” which is based on language that appears in existing § 700.11, would be revised and shortened to eliminate language newly included in the proposed

definitions section of Subpart A regarding “program identification symbols.” This revision is necessary for clarity and to prevent redundancy with the definitions in Subpart A.

Proposed § 700.12, “Prioritization directives and allocation orders,” would incorporate language from existing § 700.62(b) and (c) and would provide a discussion of the use of prioritization directives and allocation orders. The definition for “directive” in § 700.62(a) would be replaced by definitions of “allocation directive” and “prioritization directive” in proposed § 700.3 along with the other definitions of terms used in this proposed rule. Paragraphs (b) and (c) of the existing regulations at § 700.62 would become paragraphs (a) and (b) respectively in proposed § 700.12. Proposed paragraph (c) is a new paragraph that provides that allocation orders take precedence over prioritization directives, DX rated orders, DO rated orders, and unrated orders, unless a contrary instruction appears in the allocation order.

Language in proposed § 700.13, “Examples of emergency preparedness,” provides examples of what constitutes “emergency preparedness activities” and explains how those considerations impact decisions with regard to priority ratings and allocation orders. The material in this section is new.

Language in proposed § 700.14, “Changes or cancellations of priority ratings, rated orders and allocation orders,” is largely identical to language that appears in existing § 700.16 “Changes or cancellations of priority ratings and rated orders.” However, the scope would be expanded to include language describing the action necessary to change an allocation order.

Proposed § 700.15, “Adjustments or exceptions,” incorporates language that appears in existing § 700.80 “Adjustment or exceptions” found in Subpart K. Proposed § 700.15 would reflect the time period in which the Office of Strategic Industries and Economic Security should respond to requests for adjustments to or exceptions. For such requests related to a priority rated order, response should occur within 20 business days. For requests for adjustments to or exceptions from an allocation order, response should occur within 2 (two) business days. BIS believes that a deadline for responses to requests for exceptions or adjustments is appropriate to provide predictability in the priorities and allocations processes. In addition, because allocations, if used, would address national emergencies, BIS believes that a shorter deadline to

respond in those instances is appropriate.

Proposed § 700.16, which incorporates language from § 700.81 of the existing regulations, sets forth the procedures for appealing to the Assistant Secretary for Export Administration for review of a decision regarding a request for an exception from or adjustment to a priority rated order or allocation order. Most of the language in proposed § 700.16 is taken from language that appears in § 700.81 of the existing regulations. However, § 700.81 provides no express procedure for appeals from a decision regarding a request for an exception from or adjustment to allocation orders. This rule would adopt the appeals procedures currently prescribed for requests for exceptions from, or adjustments to, priority rated orders to appeals from allocation orders with one exception. Appeals from allocation orders would have to be received in the Office of the Assistant Secretary for Export Administration within 5 (five) business days of the receipt of the decision by the party appealing that decision. The Assistant Secretary for Export Administration would have discretion to accept appeals after the 5 day deadline. For priority rated orders, the deadline would continue to be 45 calendar days. The proposed rule also would continue to give the Assistant Secretary discretion to accept appeals after that 45 day deadline, but would remove the phrase “for good cause shown from the sentence authorizing such acceptances because the phrase adds nothing of substance to the sentence. Because BIS will issue allocation orders only during a national emergency, the urgent nature of the circumstance and its possible impact on industry make a five business day deadline for filing an appeal necessary.

Language in proposed § 700.17 “Protection against claims” is identical to the language that appears in existing § 700.90 of Subpart L. BIS is proposing to move the language to § 700.17 in Subpart B to emphasize the point that the protections in this section would apply equally to persons complying with official actions related to priorities and to allocations.

#### *Subpart C*

Proposed Subpart C would address matters related to priorities and would be based largely on language currently in Subpart D and Subpart F. The proposed subpart would be titled “Complying with Priority Ratings and Orders” to reflect the subpart’s narrower scope as compared to proposed Subpart B. However, as noted above, the

language in § 700.10, “Delegation of Authority,” and § 700.16, “Changes or cancellations of priority ratings and rated orders,” of the existing regulations would be modified, retitled, and moved to proposed Subpart B. BIS is proposing these changes because it believes that discussing matters related to priorities in the order set forth in this proposed rule is more logical and easier to follow than the order in which such matters are discussed in the existing rule.

Proposed § 700.21, “Rated Orders,” would reflect language that appears in existing § 700.3 but would be revised and shortened to prevent redundancy with language provided in the proposed definitions section of Subpart A. The new title also distinguishes this section from proposed § 700.11.

Proposed § 700.22, “Elements of a rated order,” includes language that appears in existing § 700.12 but would include the phrase “program identification symbol” in proposed paragraph (a) to clarify what constitutes an official priority rating in accordance with Schedule 1. In addition, a new element setting forth language that should be included in those rated orders for emergency preparedness requirements for which expedited action is necessary and appropriate to meet such requirements, would be added. The language would identify the rated order as one for an emergency preparedness requirement and would specify that the order must be accepted or rejected within a specified number of working days. When issuing the rated order, the rating agency would insert a number of working days ranging from one through fourteen as appropriate to the transaction. This section also would be reworded to clarify the text.

Proposed § 700.23, “Use of rated orders,” incorporates the text from existing § 700.17. This proposed section would describe when and how a person would use a rated order. BIS would also incorporate language that appears in § 700.17 of the existing regulations into proposed § 700.23 to improve the organization of the proposed rule.

Language in proposed § 700.24, “Limitations on placing rated orders,” draws from the language that appears in existing § 700.18 but is modified to recognize that in some instances, other agencies’ regulations would authorize the placement of rated orders. Existing § 700.18 prohibits placing rated orders that are not authorized by “this regulation.” BIS would recognize other agencies’ authority by modifying the language in paragraph (a) of proposed § 700.24 to state that rated orders issued pursuant to this part (*i.e.*, 15 CFR part 700) may not be used except as

authorized by this part. BIS is making this change because it does not intend to regulate conduct that is subject to the regulations of other agencies and not subject to regulations that are administered by BIS.

In proposed § 700.25, “Acceptance and rejection of rated orders,” the proposed rule would move the language that appears in § 700.13 of the existing regulations, and modify it to specify the timeframes within which persons must accept or reject rated orders for emergency preparedness-related approved programs. This section was also revised by removing reference to the OMB control number because such reference is not needed in the regulatory text.

The proposed rule would add language to proposed § 700.25 to distinguish the time frame within which persons must respond to priority rated orders for certain emergency preparedness requirement orders from other rated orders. The recipient would be required to accept or reject rated orders that contain the deadline specific language set forth in proposed § 700.22(b) within the time specified in the order. That time could be in the range of one through fourteen working days. The issuing agency would select the number of days according to the urgency of the situation for which the order is issued at the time of the order’s issuance.

The timeframe for acceptance or rejection of rated orders for all other approved programs remains fifteen days for DO programs and ten days for DX programs. BIS is proposing the shorter time limits in which the recipient must respond to a rated order issued in connection with an emergency preparedness program because such programs would involve disaster assistance, emergency response or similar activities. BIS believes that the exigent circumstances inherent in emergency preparedness related programs justify requiring a response time commensurate with the exigencies of the situation. In addition, a note would be added to alert the public that in some instances, for example certain emergency preparedness situations, a shorter time limit may be specified. The proposed note also alerts the public that priorities regulations issued by other Delegate Agencies may have shorter time limits than the time limits provided by BIS, and the recipient of a rated order must follow the regulations of the Delegate Agency issuing the rated order.

The language in proposed § 700.26 “Preferential scheduling,” proposed § 700.27 “Extension of priority ratings,”

and proposed § 700.28 “Metalworking machines,” incorporates the language that appears in the existing regulations at §§ 700.14, 700.15 and 700.31 respectively. BIS is proposing to move the language of these sections to Subpart C because it believes placing the language governing priorities in a single subpart would make the regulations easier to understand and would clarify the organization of these regulations. The proposed sections retain much of the original language from those sections, but also have been amended to provide examples in some instances, and to make the processes described in each section clearer.

#### *Subpart D*

Proposed Subpart D, “Industrial Priorities for Energy Programs,” describes the use of priority rating authority to support energy programs approved by the Department of Energy.

Proposed § 700.30, “Use of priority ratings for energy programs” and § 700.31, “Application for priority rating authority,” would use text that appears in the existing regulations at §§ 700.20 and 700.21, respectively. The phrase “for energy programs” would be added to the header of proposed § 700.30 to describe accurately the scope of the text of that section. Proposed § 700.31 would not contain language that appears in paragraphs (a) and (d) of § 700.21 the existing regulations. Paragraph 700.21(a) of the existing regulations describes a procedure and process used by the Department of Energy that is more appropriately addressed in that agency’s regulations, and therefore this proposed rule would not include that discussion from regulations. Paragraph 700.21(d) of the existing regulations describes an internal BIS procedure that is not regulatory in nature and thus would not be included in the regulations. Apart from those changes, the text of proposed Subpart D is the same as the text of existing §§ 700.20 and 700.21.

#### *Subpart E*

Proposed Subpart E “Special Priorities Assistance” describes instances in which BIS would provide assistance in resolving matters related to priority rated contracts and orders. The text is taken from existing Subpart H with principle changes discussed below.

Proposed § 700.40 “General provisions” is based on existing § 700.50, but has been modified to make it clearer and more succinct. Discussions unrelated to the special priorities assistance that BIS can provide would be eliminated as would a recitation of the OMB Paperwork Reduction Act control number for the

form used to request assistance from BIS because they are unnecessary and detract from the main point of the section, which is to illustrate when and how BIS can provide special priorities assistance. Although special priorities assistance may be requested for any reason, three examples would be provided. These examples are based on BIS’s experience and illustrate circumstances where BIS has been able to provide assistance in the past.

In proposed § 700.41 “Request for priority rating authority” is largely the same text that appears in § 700.51 of the existing regulations, except that the statement in existing § 700.51(c)(3)(v), which states that BIS will consider the political sensitivity of the project in reviewing requests for rating authority in advance of a prime contract would not be included, because BIS would not consider that factor in deciding whether to grant rating authority.

Proposed § 700.42 and § 700.43 reflect the same text that appears in existing § 700.53 and § 700.55 respectively, with one exception. In proposed § 700.42 the word “develop” would replace the word “effect” that is currently in § 700.53 to make that language clearer.

In some instances, BIS can provide priorities assistance to persons located in foreign nations or to international organizations (e.g., NATO, United Nations agencies, etc.) seeking assistance in obtaining military and critical infrastructure items in the United States or priority rating authority for military and critical infrastructure items to be purchased in the United States. In addition, BIS can sometimes provide informal assistance to persons in the United States who are seeking assistance in obtaining items from foreign countries. In this proposed rule, BIS would expand the language describing this assistance pursuant to the changes specific to the new availability of critical infrastructure items to non-U.S. persons set forth in the DPAR, and for the purpose of clarification.

This proposed rule would add a new section that specifically describes military assistance with respect to Canada (proposed § 700.44, “Military assistance programs with Canada”), and would create another section describing such assistance with respect to other nations and international organizations (proposed § 700.45, “Military assistance programs with other nations and international organizations”). Currently, information about military assistance with respect to all eligible foreign nations appears in § 700.55 of the existing regulations, and that section does not mention international

organizations. BIS is proposing to create a new section that speaks to military assistance with respect to Canada because the Canadian Government has been authorized to place priority ratings in the United States to support approved defense programs without the endorsement of the U.S. Department of Defense (DOD). Persons in other foreign countries may place priority ratings in the United States if their requests for military assistance are sponsored by their government and have DOD approval and endorsement. BIS believes that this difference justifies creation of separate sections to address these procedures. In addition, because BIS has provided assistance to international organizations in the past, adding a reference to international organizations in proposed § 700.45 merely codifies existing agency practice and does not represent a change in policy.

In addition, this rule proposes to add new § 700.45 that would add Finland to the list of nations that have bilateral security of supply arrangements with the U.S. Department of Defense, reflecting an agreement signed by the United States and Finland in October 2009. Proposed § 700.45 would also make it clear that persons in countries that do not have bilateral security of supply arrangements with the U.S. Department of Defense (DOD) may still seek assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States.

Proposed § 700.46, "Critical infrastructure assistance programs with other nations and international organizations," is also a new section that would describe how persons in foreign nations or international organizations may place priority ratings in the United States if their requests for critical infrastructure assistance are sponsored by their government or organization and have received the approval and endorsement of the U.S. Department of Homeland Security. The Department of Commerce is adding this section pursuant to the requirements of the DPAR, which include critical infrastructure protection and restoration assistance to foreign nations and international organizations.

#### Subpart F

Proposed Subpart F "Official Actions" is taken largely from existing Subpart I of the same name. Proposed §§ 700.50, 700.51 and 700.52 employ the text of existing §§ 700.60, 600.61 and 700.63, respectively, without substantive change. The substance of existing § 700.62 "Directives" has been amended to clarify that these directives are

"prioritization directives" and has been incorporated into the definitions in proposed § 700.3. These changes are being made to improve the clarity and flow of the regulations.

#### Subpart G

Proposed Subpart G "Allocations in a National Emergency" contains mostly new material and would replace language in existing Subpart F. Proposed Subpart G would provide the public with detailed information on the procedures governing allocations actions. Allocations actions will likely be used in response to a national emergency.

Proposed § 700.61 describes allocations and when and how allocation orders would be used. Specifically, allocation orders would be used only if priorities authority would not provide a sufficient supply of material, services or facilities for national defense requirements, or when use of priorities authority would cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities. Allocation orders would not be used to ration materials or services at the retail level. Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market. BIS is proposing the standards set forth in proposed § 700.60 because it believes that they provide reasonable assurance that allocation orders will be used only in situations where the circumstances justify such orders.

Proposed § 700.62 would provide that, in the event of a conflict between a priority order or prioritization directive and allocation order or allocation directive, the latter would take precedence. BIS is proposing this order of precedence because it believes that given the extreme and rare circumstances under which allocation orders would be issued as compared to the serious, but more frequently encountered circumstances under which priority orders are issued, it can reasonably predict that the justification for the allocation order will overcome any justification for any priority order that conflicts with the allocation order.

Proposed § 700.63 describes the three types of allocation orders that BIS might issue, which are a set-aside, an allocation directive, and an allotment. A set-aside is an official action that would require a person to reserve resource capacity in anticipation of receipt of rated orders. An allocation directive is an official action that would require a

person to take or refrain from taking certain actions in accordance with its provisions (an allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period). An allotment is an official action that would specify the maximum quantity of an item authorized for use in a specific program or application. The text in proposed § 700.63 is largely new. BIS is proposing these three types of allocation orders because it believes that, collectively they describe the types of actions that might be taken in any situation in which allocation is justified.

Proposed § 700.64 "Elements of an allocation order," is a new section that sets forth the minimum elements of an allocation order. Those elements are:

- (a) A detailed description of the required allocation action(s);
- (b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the head of the Resource Agency placing the order. The signature or use of the name certifies that the order is authorized under the DPAS regulations and that the requirements of those regulations are being followed; and

(d) A statement that reads in substance: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of 15 CFR 700."

BIS is proposing these elements because it believes that they provide a proper balance between the need for standards to permit the public to recognize and understand an allocation order if one is issued, and the expectation that any actual allocation orders will have to be tailored to meet unforeseeable circumstances. The language of proposed § 700.64 would not preclude BIS from including additional information in an allocation order if circumstances warrant doing so.

Proposed § 700.65 "Mandatory acceptance of allocation orders" would require that an allocation order must be accepted if a person is capable of fulfilling the order. This section also states that a person may not discriminate against an allocation order in any manner, such as by charging higher prices or imposing terms and conditions different than what the person imposed on contracts or orders

for the same resource(s) that were received prior to receiving the allocation order. This section also instructs the public on the procedures to follow to reject an allocation order, and refers the public to proposed § 700.15 for information on how to seek adjustment of or exception to an allocation order. BIS is proposing § 700.65 to make it clear to the public that the limited circumstances and emergency situations that trigger issuance of an allocation order require immediate response from the public in order to address the situation in an expedient fashion.

Proposed § 700.66 “Changes or cancellations of allocation orders” would provide notice that the Department of Commerce may modify or cancel an allocation order. BIS is proposing this language because it believes that the uncertain nature of the events attributed to allocation orders, and the need for flexibility in dealing with a national emergency, require that BIS be able to modify or cancel orders to address changing circumstances as they arise.

#### Subpart H

Proposed Subpart H, “Compliance,” is taken largely from the language that appears in Subpart J of the existing regulations with little change. The language in existing §§ 700.70, 700.71, 700.72, 700.73, 700.74 and 700.75 of Subpart J would appear in §§ 700.70, 700.72, 700.73, 700.74, 700.75, and 700.76, respectively, in Subpart H. The term “official actions” would be removed from the text of this subpart. This term would be removed because its inclusion in the text suggested that official actions were something other than the activities set forth in part 700. Additionally, throughout Subpart H, references to “related statutes” would be removed from the phrase the “Defense Production Act, the Selective Service Act and related statutes” because the Defense Production Act and the Selective Service Act are the legal basis for BIS’s administrative and enforcement activities set forth in the Defense Priorities and Allocations System regulations (15 CFR part 700). The removal of the reference to unnamed “related statutes” does not impact BIS’s authority or public understanding of the compliance requirement that Subpart H is intended to address. The language currently in § 700.70(b) stating that persons who place rated orders should be familiar with and must comply with this regulation does not appear in proposed § 700.70 because BIS believes that it is unnecessary either for public

understanding of the rule or as a basis for enforcement.

Proposed § 700.71 reflects language that appears in § 700.91 “Records and reports” in Subpart L of the existing regulations. BIS believes that placing all compliance related provisions in a single subpart improves the organization of the DPAS. Additionally, the language in proposed § 700.72 would be modified to clarify that personal service of a demand for information or inspection authorization may be made by leaving a copy of the document with a person who is at least eighteen years of age. The language that appears in § 700.71 of the existing regulations provides that the person must be of “suitable age and discretion.” The Department of Commerce is proposing this change in conformity with the proposed rules of other agencies delegated authority under the DPA and in conformity with the language in existing § 700.71(f)(3), which requires that a person receiving service of a demand for information or inspection authorization must be at least eighteen years of age.

#### Subpart I

Proposed Subpart I “Miscellaneous Provisions” is taken largely from Subpart L of the existing regulations. The language in existing §§ 700.92 and 700.93 would become §§ 700.80 and 700.81, respectively. Language in proposed § 700.80(c) would mirror the language that appears in § 700.92(c) of the existing regulations but would include a reference to the Defense Priorities and Allocations System because the Defense Priorities and Allocations System superseded both the Materials System and the Defense Priorities System, in 1984. Language in proposed § 700.80(d) would reflect the language that appears in § 700.92(d) of the existing regulations but would reflect current terminology. Substantively, existing § 700.92(d) provides that repeals of rules, orders, schedules and delegations of authority will not affect any penalty or liability incurred while such rules, orders, schedules and delegations of authority were in force. As previously noted, the language in § 700.90 “Protection against claims” of the existing regulations would be moved to proposed § 700.17 in proposed Subpart B, and the language in § 700.91 “Records and Reports” of the existing regulations would be moved to proposed § 700.71 in proposed Subpart H to make the DPAS regulations more organized and easier to read. BIS is proposing the language in proposed § 700.80(c) and (d) to state more precisely meaning that BIS has

attributed to those two paragraphs for years.

#### Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains two collections previously approved by OMB. OMB control number 0694–0053 authorizes the requirement that recipient of rated orders notify the party placing the order whether or not they will fulfill the rated order. BIS believes that this rule will not materially change the burden imposed by this collection. OMB control number 0694–0057 authorizes the collection of information that parties must send to BIS when seeking special priorities assistance or priority rating authority. BIS believes that this rule will not materially change the burden imposed by this collection. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by e-mail at [jseehra@omb.eop.gov](mailto:jseehra@omb.eop.gov) or by fax to (202) 395–7285 and to John Isbell, [jisbell@bis.doc.gov](mailto:jisbell@bis.doc.gov).

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Acting Chief Counsel of Regulations,

Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

#### *Number of Small Entities*

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (August 2008 Edition), has a maximum annual revenue of \$ 33.5 million and a maximum of 1,500 employees (for some business categories, these number are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule sets criteria under which BIS (or agencies to which BIS delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which BIS would issue orders allocating resources or production facilities. Because the rule affects commercial transactions, BIS believes that small organizations and small governmental jurisdictions are unlikely to be affected by this rule. However, BIS has no basis on which to estimate the number of small businesses that are likely to be affected by this rule.

#### *Impact*

BIS believes that any impact that this rule might have on small businesses would be minor. The rule has two principle components: prioritization and allocation. Prioritization is the process that is, by far, more likely to be used. Under prioritization, BIS designates certain orders, which may be placed by Government or by private entities, and assigned under one of two possible priority levels. Once so designated, such orders are referred to as "rated orders." The recipient of a rated order must give it priority over an unrated order. The recipient of a rated order with the higher priority rating must give that order priority over any rated orders with the lower priority rating and over unrated orders. A recipient of a rated order may place two

or more orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from any liability for damages or penalties for actions or inactions made in compliance with the rule.

BIS expects that this rule will not result in any increase in the use of rated orders. The changes to the provisions of 15 CFR part 700 that apply to rated orders are primarily simplifications and clarifications. The standards under which a rated order would be issued are not changed by this rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not require a reduction in the total volume of orders nor would they require the recipient to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net loss.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that BIS might take are as follows:

*Set-aside:* An official action that requires a person to reserve resource capacity in anticipation of receipt of rated orders.

*Allocation directive:* An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. An allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, or divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period.

*Allotment:* An official action that specifies the maximum quantity of an item authorized for use in a specific program or application.

BIS has not taken any actions under its existing allocations authority since the early 1950s (during the Korean conflict) and any future allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of the Defense Production Act of 1950, as

amended, (50 U.S.C. app. § 2071), hereinafter "DPA," and by Section 201(d) of Executive Order 12919 of June 3, 1994, as amended, BIS may implement allocations only if the Secretary of Commerce made, and the President approved, a finding "(1) that the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship." The term "national defense" is defined to mean "programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such term includes emergency preparedness activities conducted pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration."

Any allocation actions taken by BIS would also have to comply with Section 701(e) of the DPA (50 U.S.C. app. 2151(e)), which provides that "small business concerns shall be accorded, to the extent practicable, a fair share of the such material [including services] in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns."

#### *Conclusion*

Although BIS cannot determine precisely the number of small entities that would be affected by this rule, BIS believes that the overall impact on such entities would not be significant. With respect to priorities authority, this rule is not likely to increase the number of priority rated contracts compared to the number being issued currently. In addition, in most instances, rated contracts would be in addition to other (unrated) contracts and not reduce the total amount of business of the firm that receives a rated contract.

BIS's lack of experience with allocations makes gauging the impact of an allocation, should one occur, difficult. Because allocations can be imposed only after a determination by the President, and the fact that BIS has taken no allocations actions in more than fifty years, one can expect allocations will be a rare occurrence. However, BIS believes that the requirement for a Presidential

determination and the provisions of section 701 of the DPA provide reasonable assurance that any impact on small business will not be significant.

Therefore, for the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce certified that this action would not have a significant impact on a substantial number of small entities.

#### List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

For the reasons stated in the preamble, 15 CFR part 700, is proposed to be revised as follows:

#### PART 700—[AMENDED]

1. The authority citations paragraph for part 700 is revised to read as follows:

**Authority:** 50 U.S.C. App. 2061, *et seq.*; 42 U.S.C. 5195, *et seq.*; 50 U.S.C. App 468; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12919, 59 FR 29525, 3 CFR, 1991 Comp. 901; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; E.O. 12656, 53 FR 226, 3 CFR, 1988, Comp. 585.

2. Subpart A is revised to read as follows:

##### Subpart A—Purpose, Overview and Definitions.

Sec.

700.1 Purpose.

700.2 Overview.

700.3 Definitions.

##### Subpart A—Purpose, Overview and Definitions.

###### § 700.1 Purpose.

This part implements the Defense Priorities and Allocations System (DPAS) that is administered by the U.S. Department of Commerce, Bureau of Industry and Security. The DPAS implements the priorities and allocations authority of the Defense Production Act specific to industrial resources, including use of that authority to implement emergency preparedness activities pursuant to Title VI of the Stafford Act (Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and the priorities authority of the Selective Service Act, 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.

###### § 700.2 Overview.

(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 and may exercise priorities or allocation authority to ensure the timely delivery of industrial items to meet approved program requirements.

(c) The Department of Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to certain government agencies that issue such contracts or orders. Such delegations include authority to authorize recipients of rated orders to place ratings on contracts or orders to suppliers and subcontractors. Schedule I includes a list of agencies to which the Department of Commerce has delegated authority.

###### § 700.3 Definitions.

The definitions in this section apply to the entirety of this part unless otherwise stated in a specific definition.

**Allocation.** The control of the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

**Allocation Authority.** The authority to allocate materials, facilities and services for use in approved programs.

**Allocation Directive.** An official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. An allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, divert the supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period.

**Allocation Order.** An official action to control the distribution of materials, services or facilities for a purpose deemed necessary or appropriate to promote the national defense.

**Allotment.** An official action that specifies the maximum quantity of an item for specified use to promote the national defense.

**Approved Program.** A program determined by the Secretary of Defense,

the Secretary of Energy or the Secretary of Homeland Security as necessary or appropriate for priorities and allocations support to promote the national defense.

**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.

**Critical Infrastructure.** Any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

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

**Defense Production Act.** The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), is the statute authorizing the President to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders and to require the allocation of materials, services, and facilities as necessary or appropriate to promote the national defense.

**Emergency Preparedness.** All activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard.

**Industrial Resources.** All materials, services, and facilities, including construction materials that are needed to establish or maintain an efficient and modern defense industrial capacity, 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.

**MRO.** Maintenance, repair and/or operating supplies as those three terms are defined in this section. However, 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. The elements of MRO are defined as follows:

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

(2) *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, and

(3) *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.

*National Defense.* Programs for military and energy production or construction, military or critical infrastructure assistance to a foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

*Official action.* An action taken by the Department of Commerce under the authority of the Defense Production Act, the Selective Service Act, and this part. Subparts B, F and H describe the official actions that may be taken by the Department of Commerce. Official actions include the issuance of set-asides, rating authorizations, allocation or prioritization 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, including the United States Government and any authorized foreign government or agency thereof, or international organization delegated authority as provided in this part.

*Priorities Authority.* The authority of the Department of Commerce, pursuant to Section 101 of the Defense

Production Act, to require priority performance of contracts and orders for industrial resource items for use in approved programs.

*Priority Rating.* An identifying code assigned by a delegate agency or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol. The Department of Commerce uses the priority rating DO and DX; with DX having priority over DO.

*Prioritization Directive.* An official action which requires a person to take or refrain from taking certain actions in accordance with its provisions. A prioritization directive may require a person to satisfy a rated requirement within a specific time period.

*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 and the potential for maintaining its integrity as a capital item in excess of one year.

*Program Identification Symbols.* Abbreviations used to indicate which approved program is supported by a rated order. The list of approved programs and their identification symbols is found in Schedule I of this part. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

*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 part.

*Resource Agency.* Any U.S. Government agency delegated priorities and allocations authority in Section 201 of Executive Order 12919.

*Selective Service Act.* Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 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.

*Set-Aside.* An official action that requires a person to reserve resource capacity in anticipation of the receipt of rated orders.

*Short Supply Item.* An item that is in short supply due to a sudden and substantial increase in demand or decrease in supply.

*Stafford Act.* Title VI (Emergency Preparedness) of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

3. Subpart B is revised to read as follows:

#### **Subpart B—Industrial Priorities and Allocations**

Sec.	
700.10	Authority.
700.11	Priority ratings.
700.12	Prioritization directives and allocation orders.
700.13	Examples of emergency preparedness.
700.14	Changes to or cancellations of priority ratings, rated orders and allocation orders.
700.15	Adjustments or exceptions.
700.16	Appeals.
700.17	Protection against claims.

#### **Subpart B—Industrial Priorities and Allocations**

##### **§ 700.10 Authority.**

(a) *Delegations to the Department of Commerce.* 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, 3 CFR, 1991 Comp., p. 901). The priorities authorities of the President under the Selective Service Act 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, 3 CFR 1991 Comp., p. 309).

(b) *Delegations by the Department of Commerce.* In turn, the Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for industrial resources needed for use in approved programs.

(c) *Jurisdiction limitations.* (1) The priorities and allocations authority for certain items have been delegated under Executive Order 12919, other executive orders, or Interagency Memoranda of Understanding between other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to those other items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (delegated to the Department of Agriculture);

(ii) All forms of energy (delegated to the Department of Energy);

(iii) Health resources (delegated to the Department of Health and Human Services);

(iv) All forms of civil transportation (delegated to the Department of Transportation); and

(v) Water resources (delegated to the Department of Defense/U.S. Army Corps of Engineers).

(2) The priorities and allocations authority set forth in this part may not be applied to communications services (delegated to the National Communications System under Executive Order 12472 of April 3, 1984, 49 FR 13471, 3 CFR, 1985 Comp., p. 193).

#### § 700.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority authorized by this subpart, identified by the rating symbols "DO" and "DX."

(2) All DO rated orders have equal priority with each other and take precedence over unrated orders. All DX rated orders have equal priority with each other and take precedence over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 700.12(c) of this part.)

(3) In addition, a prioritization directive issued by the Department of Commerce takes precedence over any DX rated order, DO rated order or any unrated order, as stipulated in the prioritization directive. (For a full discussion of prioritization directives, see § 700.12 of this part.)

(b) *Program identification symbols.* 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.

#### § 700.12 Prioritization directives and allocation orders.

(a) A person must comply with each prioritization directive issued. However, a person may not use or extend a prioritization directive to obtain any items from a supplier, unless expressly authorized to do so in the prioritization directive.

(b) Prioritization 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 prioritization directive.

(c) Allocation orders take precedence over prioritization directives, DX rated orders, DO rated orders and unrated orders previously or subsequently received, unless a contrary instruction appears in the allocation order.

#### § 700.13 Examples of emergency preparedness.

There are instances where emergency preparedness is a basis for issuance of a priority rating or allocation order. Emergency preparedness is defined in

§ 700.3 of this part, and largely depends on the nature of the hazards encountered. Examples of hazards that relate to emergency preparedness include the following:

(a) Measures to be undertaken for anticipated hazards (including the establishment of appropriate organizations, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and when appropriate, the nonmilitary evacuation of the civilian population);

(b) Measures to be undertaken during a hazard (including the evacuation of personnel to shelter areas and the control and use of lighting and civil communications); and

(c) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, and immediately essential emergency repair or restoration of damaged vital facilities).

#### § 700.14 Changes to or cancellations of priority ratings, rated orders and allocation orders.

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

(1) An official action of, or an allocation order from, 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 to make it a rated order, or if 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 § 700.24 of this part.

(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 (prior to the start of production); 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 when a priority rating is changed or cancelled, all suppliers must be promptly notified in writing by the person adding, changing or canceling the priority rating.

(g) An allocation order may be changed by an official action of the Department of Commerce.

#### § 700.15 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 part 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 part or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act, or this part.

(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 part or official action for which adjustment or from which an exception is sought and a full and precise statement of the reasons why relief should be provided. Requests for adjustment or exception pursuant this section should be sent to: Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Room 3876, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, Ref: DPAS Adjustments; Fax: (202) 482-5650.

(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 part 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.

(1) The Office of Strategic Industries and Economic Security shall respond to request for adjustment of or exceptions to priority orders within 20 (twenty) business days of the date of receipt.

(2) The Office of Strategic Industries and Economic Security shall respond to request for adjustment of allocation orders or exceptions to within 2 (two) business days of receipt.

(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 in accordance with § 700.16 of this part.

#### § 700.16 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.15 of this part, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial. Such appeals should be submitted to the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room 3886, Washington, DC 20230, Ref: DPAS Appeals.

(b) Appeals of denied requests of exceptions from or adjustments to priority orders must be received by the Assistant Secretary for Export Administration 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.

(c) Appeals of denied requests of exception from or adjustment to allocation orders must be received by the Assistant Secretary for Export Administration no later than 5 business days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 5 day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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.

#### § 700.17 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 part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

4. Subpart C is revised to read as follows:

#### Subpart C—Complying With Priority Ratings and Orders.

Sec.

- 700.21 Rated orders.
- 700.22 Elements of a rated order.
- 700.23 Use of rated orders.
- 700.24 Limitations on placing rated orders.
- 700.25 Acceptance and rejection of rated orders.
- 700.26 Preferential scheduling.
- 700.27 Extension of priority ratings.
- 700.28 Metalworking machines.

#### Subpart C—Complying With Priority Ratings and Orders.

##### § 700.21 Rated orders.

(a) Rated orders are identified by a priority rating and a program identification symbol. Rated orders take precedence over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take precedence over DO rated orders. Program identification symbols indicate which approved program is attributed to the rated order.

(b) Persons receiving rated orders must give them preferential treatment as required by this part.

(c) All rated orders must be scheduled, to the extent possible, in a manner 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 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 part.

##### § 700.22 Elements of a rated order.

(a) *Elements required for all rated orders.* Each rated order must include:

(1) The appropriate priority rating and program identification symbol (e.g., DO-A1, DX-A4, DO-H1);

(2) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. When a “requirements contract,” “basic ordering agreement,” “prime vendor contract,” or similar procurement document bearing a priority rating contains no specific delivery date or dates, but provides 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,” the purchase orders supporting such contracts or agreements 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;

(3) 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, manual or digital, certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) 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 in the execution of this rated order (15 CFR part 700).

(b) If the rated order is placed in support of emergency preparedness requirements and expedited action is

necessary and appropriate to meet these requirements, the following sentences should be added following the statement set forth in paragraph (a)(4) of this section: "This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within (the rating agency will insert a time frame in the range of one through fourteen working days) working days in accordance with Section 700.25(d)(3) of the Defense Priorities and Allocations System regulation (15 CFR part 700)."

#### **§ 700.23 Use of rated orders.**

(a) *Use of rated orders.* A person may 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 in addition to 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) *Use of rated orders to replace inventoried items.* 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) *Combining rated orders.* 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 § 700.22 of this part, are included on the order with the statement required in § 700.22(d) of this part 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) as it pertains to the rated quantities."

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 700.21 of this part 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 part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 700.15 of this part.

(e) *Rated orders and minimum commercially procurable quantities.* 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) *Federal Acquisition Regulation.* A person is not required to place a priority rating on an order for less than \$50,000, or one-half Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (48 CFR chapter 1), see FAR 2.101 or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

#### **§ 700.24 Limitations on placing rated orders.**

(a) *General limitations.* (1) A person may not place a rated order pursuant to this part unless entitled to do so under the provisions of this part.

(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 obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient for all of the rated orders if combined.

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by the Department of Commerce (see § 700.41(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 the Department of 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 § 700.41 of this part).

(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) *Limitations on Use of Ratings.* Rated orders may not be placed on the following items under the jurisdiction of the Department of Commerce; however, these items must be supplied if request is pursuant to an allocation directive described under Subpart G. These excluded items are:

- (1) Copper raw materials.
- (2) Crushed stone.
- (3) Gravel.
- (4) Sand.
- (5) Scrap.
- (6) Slag.
- (7) Steam heat, central.
- (8) Waste paper.

#### **§ 700.25 Acceptance and rejection of rated orders.**

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person capable of fulfilling a rated order shall accept every rated order received and must fill such orders in due consideration of any other rated order, and regardless of 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 are imposed for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by the Department of 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 the Department of 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 (see § 700.76 of this part).

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order for all approved programs and, except as provided in paragraph (d)(2) of this section, must 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.

(2) For rated orders involving emergency preparedness requirements and containing the language specified in § 700.22(b) of this part, notification of acceptance or rejection must be transmitted in writing or electronically within the time specified in the rated order.

**Note to Paragraph (d)(2):** There may be certain instances, including, for example, the emergency preparedness requirements listed in § 700.13 of this part, where a shorter time period for acceptance or rejection of the rated order may apply. The time period for acceptance and rejection of rated orders is dictated by the regulations of the Delegate Agency issuing the rating. The contract or the contracting official should identify which agency has issued the rated order and provide reference to the regulations that apply to that rated order.

(3) If the rated order is rejected, the person must provide reasons in writing (hard copy) or electronically for the rejection.

(4) 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 (hard copy) or electronic confirmation must be provided within five (5) working days of the verbal notice.

#### **§ 700.26 Preferential scheduling.**

(a) *Scheduling requirement, modification of non-rated order delivery dates.* 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 for other orders is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) *Precedence of orders.* DO and DX rated orders must be given production precedence 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 precedence 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 business 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. However, if business operations cannot be altered to meet both the June 3 and July 15 delivery dates, then the DX rated order must be given priority over the DO 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 precedence 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 precedence 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 Subpart E of this part. If a customer placing a rated order objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in Subpart E of this part. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.24(d)(3) of this part.

(d) *Use of inventoried items to fill rated orders.* 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 the rated order as provided in § 700.23(b) of this part.

**§ 700.27 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 part 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. Therefore, the inclusion of the rated order will continue from contractor to subcontractor to supplier throughout the entire procurement chain.

**§ 700.28 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:

- (1) Bending and forming machines.
- (2) Boring machines.
- (3) Broaching machines.
- (4) Drilling and tapping machines.
- (5) Electrical discharge, ultrasonic and chemical erosion machines.
- (6) Forging machinery and hammers.
- (7) Gear cutting and finishing machines.
- (8) Grinding machines.
- (9) Hydraulic and pneumatic presses, power driven.
- (10) Machining centers and way-type machines.
- (11) Manual presses.
- (12) Mechanical presses, power driven.
- (13) Milling machines.
- (14) Miscellaneous machine tools.
- (15) Miscellaneous secondary metal forming and cutting machines.
- (16) Planers and shapers.
- (17) Polishing, lapping, boring, and finishing machines.
- (18) Punching and shearing machines.
- (19) Riveting machines.
- (20) Saws and filing machines.
- (21) Turning machines, lathes, including automatic.
- (22) Wire and metal ribbon forming machines.

(c) A metalworking machine producer is not required to accept DO or DX 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 or DX rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX and DO rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

5. Subpart D is revised to read as follows:

**Subpart D—Industrial Priorities for Energy Programs**

Sec.

700.30 Use of priority ratings for energy programs.

700.31 Application for priority rating authority.

**Subpart D—Industrial Priorities for Energy Programs****§ 700.30 Use of priority ratings for energy programs.**

(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.

**§ 700.31 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) If the Department of Energy notifies the Department of Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, the Department of Commerce must make two findings; whether the items in question are scarce, and whether there is a need to use the priorities authority.

(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 authority, the Department of Commerce will consider alternative supply solutions and other measures.

(c) After the Department of Commerce has conducted its analysis, it will advise the Department of Energy whether the two findings have been satisfied. If the findings are satisfied, the Department of Commerce will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(d) 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.

6. Subpart E is revised to read as follows:

**Subpart E—Special Priorities Assistance**

Sec.

700.40 General provisions.

700.41 Requests for priority rating authority.

700.42 Criteria for assistance.

700.43 Instances where assistance will not be provided.

700.44 Military Assistance programs with Canada.

700.45 Military Assistance programs with other nations and international organizations.

700.46 Critical Infrastructure Assistance programs with other nations and international organizations.

**Subpart E—Special Priorities Assistance****§ 700.40 General provisions.**

(a) To resolve problems or conflicts that may arise in the execution of priorities and allocations authorities, the Department of Commerce may exercise its authority to provide special priorities assistance to resolve such problems or conflicts. The Department of Commerce can provide special priorities assistance for any reason in

support of this part, 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 part.

(1) *Examples of Special Priorities Assistance Requests.* Special priorities assistance requests may be made for a variety of reasons including:

(i) A person may request special priorities assistance to obtain priority rating authority for an item from a U.S. supplier in support of an approved program to ensure timely delivery ahead of unrated orders;

(ii) A person may request special priorities assistance to obtain priority rating authority for an item to ensure timely delivery when there are one or more rated orders for the same item; or

(iii) A person may request special priorities assistance when a U.S. supplier is unable to ensure the timely delivery of a rated order due to the production schedules of other rated orders.

(2) *Assistance for persons executing priority ratings or orders.* Persons executing priority ratings or orders may apply directly to the Department of Commerce for special priorities assistance.

(b) In the event a problem arises in the fulfillment of a rated order or other action authorized by a Delegate Agency, a person should immediately contact the appropriate contract administration officer for guidance or assistance. In turn, the contract administration officer should request assistance from that Delegate Agency to resolve the problem. If the Delegate Agency is unable to resolve the problem, then the Delegate Agency may instruct the contract administration officer to request special priorities assistance from the Department of Commerce.

(c) The Department of Commerce makes the following types of special priorities assistance available: Priority rating authority; ensuring that rated orders receive preferential treatment by suppliers; resolution of production or delivery conflicts between various rated orders; assistance in placing rated orders with suppliers; verification of the urgency of rated orders; and determination of the validity of rated orders.

(d) A request for special priorities assistance or priority rating authority must be submitted on Form BIS-999 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.

#### **§ 700.41 Requests for priority rating authority.**

(a) *Reason for request.* If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, 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, the Department of 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, the Department of 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; and

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

(4) The Department of 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 has been cancelled.

#### **§ 700.42 Criteria for assistance.**

Requests for special priorities assistance should be timely, *i.e.*, the request must be submitted promptly and with enough time for the Delegate Agency or the Department of Commerce to develop 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.

#### **§ 700.43 Instances where assistance will not be provided.**

Special priorities assistance is provided at the discretion of the Department of Commerce when it is determined that such assistance is warranted to meet the objectives of this part. 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.

#### **§ 700.44 Military Assistance programs with Canada.**

To promote military assistance to Canada, this section provides for authorizing priority ratings to persons in Canada 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 in support of approved programs.

(a) The joint United States-Canadian military arrangements for the defense of North America and the integrated nature of United States and Canadian their defense industries require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(b) 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 part.

(c) 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, or electronically at [DGAPrioritesdedefense.ACQBDefencePriorities@tpsgc-pwgsc.gc.ca](mailto:DGAPrioritesdedefense.ACQBDefencePriorities@tpsgc-pwgsc.gc.ca).

(d) 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.

(e) 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 Department of Commerce.

(f) Any person in the United States requiring assistance in obtaining items in Canada must submit a request

through the Delegate Agency to the Department of Commerce on Form BIS-999. The Department of Commerce will forward appropriate requests to the Canadian Public Works and Government Services Canada.

**§ 700.45 Military Assistance programs with other nations and international organizations.**

(a) *Scope.* To promote military assistance to foreign nations and international organizations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations 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 Finland, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) *Foreign nations and international organizations.* (1) Any person in a foreign nation other than Canada, Finland, Italy, The Netherlands, Sweden, or the United Kingdom, or any person in an international organization, 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 Department of Defense DPAS Lead in the Office of the Director, Industrial Policy, 3330 Defense Pentagon, Washington, DC 20301; Telephone: (703) 697-0051; Fax: (703) 695-4885.

(i) If the end product is being acquired by a U.S. Government agency, the request should be submitted to the DPAS Lead through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation or international organization, the request must be sponsored prior to its submission to DPAS Lead by the government of the foreign nation or the international organization that will use the end product.

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

(c) *Requesting assistance in Finland, Italy, The Netherlands, Sweden, and the United Kingdom.*

(1) The U.S. Department of Defense has entered into bilateral security of supply arrangements with Finland, 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 Finland, Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Department of Defense DPAS Lead in the Office of the Director, Industrial Policy for assistance. Persons in Finland, Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with paragraph (b)(1) of this section.

**§ 700.46 Critical Infrastructure Assistance programs with other nations and international organizations.**

(a) *Scope.* To promote critical infrastructure assistance to foreign nations, this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs.

(b) *Foreign nations and international organizations.* (1) Any person in a foreign nation or international organization requiring assistance in obtaining critical infrastructure items in the United States or priority rating authority for critical infrastructure items to be purchased in the United States should submit a request for such assistance or rating authority to the Office of Policy and Program Analysis (OPPA), Federal Emergency Management Agency, U.S. Department of Homeland Security, 500 C Street, SW., Washington, DC 20472; telephone: (202) 646-3520; Fax: (202) 646-4060.

(2) The government of the foreign nation or the international organization that will use the end product must sponsor all critical infrastructure assistance requests prior to submission to the OPPA.

7. Subpart F is revised to read as follows:

**Subpart F—Official Actions**

Sec.  
700.50 General provisions.  
700.51 Rating authorizations.  
700.52 Letters of understanding.

**Subpart F—Official Actions**

**§ 700.50 General provisions.**

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

(b) Several of these official actions (rating authorizations, and letters of



understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 700.72(c) of this part. Prioritization directives and allocation directives are discussed in §§ 700.12 and 700.62, respectively, of this part.

#### **§ 700.51 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 part; 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 § 700.41 of this part.

#### **§ 700.52 Letters of understanding.**

(a) A Letter of understanding is an official action which may be issued to resolve special priorities assistance cases and reflects an agreement reached by all parties (the Department of 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 part, or to take other official action. Rather, letters of understanding are used to confirm production or shipping schedules which do not impact other rated orders.

8. Subpart G is revised to read as follows:

#### **Subpart G—Allocations in a National Emergency**

Sec.

700.61 Allocation orders—when and how used.

700.62 Precedence of allocation orders over rated orders or prioritization directives.

700.63 Allocation orders.

700.64 Elements of an allocation order.

700.65 Mandatory acceptance of allocation orders.

700.66 Changes or cancellations of allocation orders.

#### **Subpart G—Allocations in a National Emergency**

##### **§ 700.61 Allocation orders—when and how used.**

(a) Allocation orders will be used only if:

(1) Use of priorities (subpart C of this part) does not provide sufficient supply of a material, service or facility to satisfy national defense requirements; or

(2) Use of such priorities would cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities.

(b) Allocation orders will not be used to ration materials or services at the retail level.

(c) Allocation orders, when imposed, will be distributed equitably among the suppliers of the resource(s) being allocated and not require any person to relinquish a disproportionate share of the civilian market.

##### **§ 700.62 Precedence of allocation orders over rated orders or prioritization directives.**

If a conflict should occur between an allocation order and an unrelated rated order or prioritization directive, the allocation order shall take precedence.

##### **§ 700.63 Allocation orders.**

The three types of allocation orders that may be used to communicate allocation actions are:

(a) Set-asides;

(b) Allocation directives; and

(c) Allotments.

##### **§ 700.64 Elements of an allocation order.**

All allocation orders will include:

(a) A detailed description of the required allocation action(s);

(b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the head of the Resource Agency placing the order. The signature or use of the name certifies that the 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 an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of 15 CFR 700.”

##### **§ 700.65 Mandatory acceptance of allocation orders.**

(a) A person shall accept every allocation order received that the person is capable of fulfilling, and must comply with such orders regardless of any rated order, from any delegate agency, that the person may be in receipt of or other commitments involving the resource(s) covered by the allocation order.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for resources covered by the order or by imposing terms and conditions for contracts and orders involving allocated resource(s) that differ from the person's terms and conditions for contracts and orders for the resource(s) prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Department of Commerce immediately at the address, telephone or fax number in § 700.81 of this part, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days in accordance with the instructions in § 700.81 of this part. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Commerce that the order has been changed or cancelled. Alternatively, a person may request an adjustment or exception from an allocation order in accordance with the provisions set forth in § 700.15 of this part.

##### **§ 700.66 Changes or cancellations of allocation orders.**

An allocation order may be changed or canceled by an official action from the Department of Commerce.

9. Subpart H is revised to read as follows:

#### **Subpart H—Compliance**

Sec.

700.70 General provisions.

700.71 Records and reports.

700.72 Audits and investigations.

700.73 Compulsory process.

700.74 Notification of failure to comply.

700.75 Violations, penalties, and remedies.

700.76 Compliance conflicts.

#### **Subpart H—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, or this part. Such actions include audits, investigations, or other inquiries.

(b) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, or this part, is a criminal act, punishable as provided in the Defense Production Act and as set forth in § 700.75 of this part.

##### **§ 700.71 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 part 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 part or any official action. However, this part does not

specify any particular method or system to be used.

(c) Records required to be maintained by this section must be made available for examination on demand by duly authorized representatives of the Department of Commerce as provided in § 700.72 of this part.

(d) In addition, persons must develop, maintain, and submit any other records and reports to the Department of Commerce that may be required for the administration of the Defense Production Act, the Selective Service Act, and this part.

(e) Section 705(d) 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 the Department of Commerce in connection with the enforcement or administration of the Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Act and shall not be published or disclosed except as required by law.

#### § 700.72 Audits and investigations.

(a) Audits and investigations are official actions involving the examination of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, the Selective Service Act, and this part 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 part.

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

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

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

(c) In administering this part, the Department of 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, or this part. 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, or this part.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of the Department 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, or this part.

(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 the Department 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 the Department 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 at least 18 years of age 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 older 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.

#### § 700.73 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of the Department 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, or this part, the Department of 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.

#### § 700.74 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, the Department of Commerce may inform the person in writing where compliance with the requirements of the Defense Production

Act, the Selective Service Act, or this part were not met.

(b) In cases where the Department of Commerce determines that failure to comply with the provisions of the Defense Production Act, the Selective Service Act, or this part 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 willful violation of the Defense Production Act, this part, or an official action.

**§ 700.75 Violations, penalties, and remedies.**

(a) Willful violation of the provisions of the Defense Production Act, the priorities provisions of the Selective Service Act, or this part 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 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 part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this part, 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 part, 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 part, 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 part, 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.

**§ 700.76 Compliance conflicts.**

If compliance with any provision of the Defense Production Act, the Selective Service Act, or this part would

prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this part, or an official action, the person must immediately notify the Department of Commerce or the appropriate Delegate Agency for resolution of the conflict.

10. Subpart I is revised to read as follows:

**Subpart I—Miscellaneous Provisions**

Sec.

700.80 Applicability of this part and official actions.

700.81 Communications.

**Subpart I—Miscellaneous Provisions**

**§ 700.80 Applicability of this part and official actions.**

(a) This part 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 part 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 part and its schedules shall not be construed to affect any administrative actions taken by the Department of 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, Defense Priorities System or the Defense Priorities and Allocations System previously issued by the Department of Commerce. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

(d) Any repeal of any provision of this part or any order, schedule or delegation of authority issued pursuant to this part shall not release or extinguish any penalty or liability incurred under that provision, order, schedule or delegation of authority. That provision, order, schedule or delegation of authority shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

**§ 700.81 Communications.**

All communications concerning this part, 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, fax: (202) 482-5650. Communications may also be submitted electronically at [DPAS@bis.doc.gov](mailto:DPAS@bis.doc.gov), with reference to the topic of the communication in the subject line.

**Subpart J—[Removed]**

11. Subpart J is removed.

**Subpart K—[Removed]**

12. Subpart K is removed.

**Subpart L—[Removed]**

13. Subpart L is removed.

Dated: May 28, 2010.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2010-13395 Filed 6-4-10; 8:45 am]

**BILLING CODE 3510-JT-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Parts 1301, 1309**

[Docket No. DEA-304P]

RIN 1117-AB27

**Voluntary Surrender of Certificate of Registration**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Drug Enforcement Administration (DEA) proposes to amend its regulations and to revise applicable implementing forms to clarify the registration status of a registrant who voluntarily surrenders a Certificate of Registration for cause. The effect of these proposed changes would make it clear that a voluntary surrender of a registration for cause by a registrant has the legal effect of immediately terminating the registrant's registration without any further action by DEA.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before August 6, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference "Docket No. DEA-304" on all written and electronic correspondence. Written