

PART 333—EMERGENCY MANAGEMENT PRIORITIES AND ALLOCATIONS SYSTEM

Subpart A—Purpose

Sec.

333.1 Purpose of this part.

Subpart B—Overview

333.2 Program eligibility.
 333.3 Priority ratings and rated orders.
 333.4–333.7 [Reserved]

Subpart C—Definitions

333.8 Definitions.

Subpart D—Priorities and Placement of Rated Orders

333.10 Authority.
 333.11 Priority ratings.
 333.12 Elements of a rated order.
 333.13 Acceptance and rejection of rated orders.
 333.14 Preferential scheduling.
 333.15 Extension of priority ratings.
 333.16 Changes or cancellations of priority ratings and rated orders.
 333.17 Use of rated orders.
 333.18 Limitations on placing rated orders.
 333.19 Special provisions applicable to rated orders for third parties.

Subpart E—Special Priorities Assistance

333.20 General provisions.
 333.21 Requests for priority rating authority.
 333.22 Examples of assistance.
 333.23 Criteria for assistance.
 333.24 Instances where assistance will not be provided.

Subpart F—Allocation Actions

333.30 Policy.
 333.31 General procedures.
 333.32 Controlling the general distribution of a material in the civilian market.
 333.33 Types of allocation orders.
 333.34 Elements of an allocation order.
 333.35 Mandatory acceptance of an allocation order.
 333.36 Changes or cancellations of allocation orders.

Subpart G [Reserved]

Subpart H—Official Actions

333.50 General provisions.
 333.51 Rating authorizations.
 333.52 Directives.
 333.53 Letters and memoranda of understanding.

Subpart I—Compliance

333.60 General provisions.
 333.61 Audits and investigations.
 333.62 Compulsory process.
 333.63 Notification of failure to comply.
 333.64 Violations, penalties, and remedies.
 333.65 Compliance conflicts.

Subpart J—Adjustments, Exceptions, and Appeals

333.70 Adjustments or exceptions.
 333.71 Appeals.

Subpart K—Miscellaneous Provisions

333.80 Protection against claims.
 333.81 Records and reports.
 333.82 Applicability of this part and official actions.
 333.83 Communications.
 333.84 Severability.

AUTHORITY: 6 U.S.C. 313, 314; 50 U.S.C. 4511, *et seq.*; E.O. 13603, 77 FR 16651; E.O. 13909, 85 FR 16227; E.O. 13911, 85 FR 18403; DHS Delegation 09052, Rev. 00 (Jan. 3, 2017); DHS Delegation 09052 Rev 00.1 (Apr. 1, 2020).

SOURCE: 85 FR 28510, May 13, 2020, unless otherwise noted.

Subpart A—Purpose

§ 333.1 Purpose of this part.

The Federal Emergency Management Agency (FEMA) refers to this part as the Emergency Management Priorities and Allocations System (EMPAS). The EMPAS implements those priorities and allocations authorities under the Defense Production Act that are the subject of a delegation from the President to the Secretary of DHS and re-delegated to the FEMA Administrator, or to the FEMA Administrator directly, as described in §333.10 of this part. This includes the use of authority to support critical infrastructure restoration and protection, stockpiling, and emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), and related statutes, with respect to health and medical resources needed to respond to the spread of COVID-19 within the United States.

Subpart B—Overview

§ 333.2 Program eligibility.

(a) Certain programs to promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, deployment and sustainment of military forces, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include 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. For a current and complete list reflecting the latest changes to approved programs, please visit FEMA's website at www.FEMA.gov.

(b) FEMA may delegate authority to place priority ratings on contracts or orders necessary to promote the national defense to appropriate officials in certain Federal Government agencies that issue such contracts or orders, to the extent consistent with the delegation of Presidential authority under which FEMA is operating. Such delegations may include authority to authorize recipients of rated orders to place ratings on contracts or orders to contractors, subcontractors, and suppliers.

§ 333.3 Priority ratings and 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.

(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 to ensure delivery by the required delivery date.

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

treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

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

§§ 333.4–333.7 [Reserved]

Subpart C—Definitions

§ 333.8 Definitions.

The definitions in this section apply throughout this part:

Act or DPA means the Defense Production Act of 1950, as amended (50 U.S.C. 4501, *et seq.*).

Administrator means the Administrator of the Federal Emergency Management Agency.

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

Allocation order means 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 means an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act and Executive Order 13603.

Construction means 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 means 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 means a Federal Government agency authorized by delegation from FEMA to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness means all those 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. "Emergency preparedness" includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, 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).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for firefighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency re-

pair or restoration of damaged vital facilities).

Facilities includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services related to the use of any such building, structure, or other improvement.

Hazard means an emergency or disaster resulting from:

- (1) A natural disaster, or
- (2) An accidental or man-caused event.

Health and medical resources means drugs, biological products, medical devices, materials, facilities, health supplies, services, and equipment required to diagnose, mitigate, prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

Homeland security includes efforts:

- (1) To prevent terrorist attacks within the United States;
- (2) To reduce the vulnerability of the United States to terrorism;
- (3) To minimize damage from a terrorist attack in the United States; and
- (4) To recover from a terrorist attack in the United States.

Industrial resources means all materials, services, and facilities, including construction materials, but not including: food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; all forms of health resources; all forms of civil transportation; and water resources. This term also includes the term "item" as defined and used in this part.

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

Maintenance and repair and/or operating supplies (MRO).

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

(2) *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.

(3) *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.

(4) 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.

Materials includes:

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

National defense means programs for military and energy production, or construction, military or critical infrastructure assistance to any 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 means an action taken by FEMA under the authority of the Defense Production Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act and related statutes, or this part. Such actions include the issuance of rating authorizations, directives, letters and memoranda of understanding, demands for information, inspection authorizations, administrative subpoenas, and allocation orders.

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

Priorities authority means the authority of FEMA, pursuant to Section 101 of the Defense Production Act, to require acceptance and priority performance of contracts and orders for health and medical resource items and other resources as further delegated by the President to the Secretary of Homeland Security or Administrator for use in approved programs.

Priority rating means an identifying code assigned by a Delegate Agency, FEMA, or authorized person placed on all rated orders and consisting of the rating symbol and the program identification symbol.

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

Program identification symbols means abbreviations used to indicate which approved program is supported by a rated order.

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

Services includes any effort that is needed for or incidental to:

(1) The development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(2) The construction of facilities;

(3) The movement of individuals and property by all modes of civil transportation; or

(4) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Written and *in writing* mean documented via printing, typewriting, handwriting, or similar means, whether in tangible or electronic form.

Written electronic means written and in electronic form, except that when electronic form is impracticable under the circumstances, FEMA may construe this term to allow for a tangible format.

Subpart D—Priorities and Placement of Rated Orders

§ 333.10 Authority.

(a) The priorities and allocations authorities of the President under Title I of the Act that have been delegated to the Secretary of Homeland Security have been redelegated to the Administrator. These rules are issued pursuant to Title I of the Act, and implementing authorities, including such authorities as are contained in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560), which have been delegated to FEMA.

(b) *Delegations by FEMA.* FEMA may authorize Delegate Agencies to assign priority ratings to orders under these regulations as authorized.

(c) *Jurisdictional limitations.* Unless delegated by the President to DHS or FEMA, the provisions of this part are not applicable to the following resource categories, as defined in Executive Order 13603, a successor executive order, or implementing regulations issued thereunder:

(1) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Resource department with jurisdiction—Department of Agriculture);

(2) Energy supplies (Resources agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource department with jurisdiction—Department of Transportation);

(4) Health resources (Resource department with jurisdiction—Depart-

ment of Health and Human Services), except that pursuant to Executive Order 13911, the provisions of this part are applicable to health and medical resources needed to respond to the spread of COVID-19;

(5) Water resources (Resource department with jurisdiction—Department of Defense); and

(6) All other materials, services, and facilities, including construction materials (“industrial resources”) (Resource department with jurisdiction—Department of Commerce).

§ 333.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by Federal Priorities and Allocations System regulations, identified by the rating symbols “DO” and “DX.”

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 333.14(c)).

(3) In addition, a Directive issued by FEMA regarding priority treatment for a given item takes preference over any DX rated order, DO rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 333.52).

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO or DX—and the program identification symbol.

§ 333.12 Elements of a rated order.

(a) *Elements required for all rated orders.* (1) The appropriate priority rating and program identification symbol;

(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

§ 333.13

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 under 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 Emergency Management Priorities and Allocations System regulations (44 CFR part 333).”

(b) *Additional element required for certain emergency preparedness rated orders.* If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements, the following statement must be included in the order: “This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert a time limit no less than the minimum applicable time limit specified in §333.13(d)(2)].”

(c) *Additional elements required for rated orders issued by FEMA or a Delegate Agency to facilitate sales to third parties.* If a rated order is placed by FEMA or the Delegate Agency to facilitate a sale to a third party who desires to order the materials, the following statement must also be included in the order: “This rated order is placed for the purpose of facilitating a sale to [Insert third party] to promote the national defense. It must be

44 CFR Ch. I (10–1–24 Edition)

accepted or rejected pursuant to the mandatory acceptance and mandatory rejection requirements found in 44 CFR 333.13 within [Insert the applicable time limit consistent with §333.13(d)], and it is subject to the additional requirements of 44 CFR 333.19. [Third party] is responsible for satisfying the applicable terms of sale and payment. The Federal Government is not be liable for any failure to meet the terms of sale or payment. For purposes of these and any other notification requirements set forth in FEMA’s Emergency Management Priorities and Allocations System regulations (44 CFR part 333), both [Insert FEMA or Delegate Agency] and [Insert third party] are the ‘customer.’”

§ 333.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person must accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person must not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by FEMA:

(1) A person must 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 must 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 must 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 FEMA, 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 Federal 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 FEMA issued under the authority of the Defense Production Act or another relevant statute.

(d) *Customer notification requirements.*

(1) Except as provided in paragraph (d)(2) of this section, a person must accept or reject a rated order in written electronic format within 15 working days after receipt of a DO rated order and within 10 working days after receipt of a DX rated order. If the order is rejected, the person must give rea-

sons in written electronic format for the rejection.

(2) If a rated order is placed for the purpose of emergency preparedness requirements and expedited action is necessary or appropriate to meet these requirements and the order includes the statement set forth in §333.12(b), a person must accept or reject the rated order and transmit the acceptance or rejection in written electronic format within the time specified in the rated order. The minimum times for acceptance or rejection that such orders may specify are 6 hours after receipt of the order if the order is issued by an authorized person in response to a hazard that has occurred, or 12 hours after receipt if the order is issued by an authorized person to prepare for an imminent hazard.

(3) 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 electronic confirmation must be provided within 24 hours of the verbal notice.

§ 333.14 Preferential scheduling.

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

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

(1) *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

§ 333.15

44 CFR Ch. I (10–1–24 Edition)

rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order. 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.

(2) [Reserved]

(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 must give preference to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting rated orders are scheduled to be delivered or performed on the same day, the person must give preference to those orders which have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities assistance as provided in subpart E of this part. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in 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 § 333.13(d)(3).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 333.17(b).

§ 333.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by FEMA.

(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 rating will continue from contractor to subcontractor to supplier throughout the entire supply chain.

(c) A person must use rated orders with suppliers to obtain items needed to fill an emergency preparedness rated order. That person must require acceptance or rejection, and transmission of that acceptance or rejection by the supplier within the time limit stated in the rated order that is being filled.

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

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

(1) An official action of FEMA; or

(2) Written electronic notification from the person who placed the rated order (including a Delegate Agency).

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

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 333.13.

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

(e) A person must cancel any rated orders that the person (or a predecessor in interest) has placed with suppliers or cancel the priority ratings on those orders if the person no longer needs the items in those orders to fill a rated order.

(f) A person adding a rating to an unrated order, or changing or cancelling a priority rating must promptly

Fed. Emergency Mgmt. Agency, DHS

§ 333.18

provide written electronic notification to all suppliers to whom the order was sent of the addition, change, or cancellation.

§ 333.17 Use of rated orders.

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

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

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

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

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

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

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

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

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined.

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly.

(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 elements of a rated order, as required by § 333.12, are included on the order with the statement required in § 333.12(d) modified to read in substance: "This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of

the Emergency Management Priorities and Allocations System regulations (44 CFR part 333) as it pertains to the rated quantities."

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 333.13 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to give preferential treatment to the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 333.70.

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

(f) A person is not required to place a priority rating on an order for less than one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 333.18 Limitations on placing rated orders.

(a) *General limitations on placing rated orders.* A person may not place a DO or DX rated order pursuant to this part unless the person is in receipt of a rated order, has been explicitly authorized to do so by FEMA or a Delegate Agency or is otherwise permitted to do so by this part.

(b) *Specific limitations on placing rated orders.* Rated orders may not be used to obtain:

(1) Delivery on a date earlier than needed;

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

§ 333.19

procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order;

(3) Items in advance of the receipt of a rated order, except as specifically authorized by FEMA (see § 333.21(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

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

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

(ii) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 333.21).

(5) 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.

§ 333.19 Special provisions applicable to rated orders for third parties.

(a) The provisions of this part apply to rated orders placed by FEMA or a Delegate Agency to facilitate sales to third parties, regardless of the nature of their relationship to the Federal Government, unless otherwise specified.

(b) Where FEMA or a Delegate Agency has placed a rated order to facilitate a sale to a third party, the third party is responsible for satisfying the applicable terms of sale and payment. The Federal Government shall not be liable for any failure to meet the terms of sale or payment.

(c) If a third party is unable to satisfy the applicable terms of sale or payment, FEMA or the Delegate Agency may amend or cancel the rated order pursuant to § 333.16 of this part. If FEMA or the Delegate Agency amend the rated order to provide that delivery shall be made to FEMA, the Delegate Agency, or another third party instead

44 CFR Ch. I (10–1–24 Edition)

of the original third party, and the amendment shall not constitute a new rated order.

Subpart E—Special Priorities Assistance

§ 333.20 General provisions.

(a) EMPAS is designed to be largely self-executing. However, if production or delivery problems arise, a person should immediately contact FEMA (or the Delegate Agency, as appropriate) for special priorities assistance pursuant to §§ 333.20 through 333.24 and as directed by § 333.83. If FEMA (or the Delegate Agency, as appropriate) is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, FEMA (or the Delegate Agency, as appropriate) may forward the request to another resource agency, as appropriate, for action. Special priorities assistance is a service provided to alleviate problems.

(b) Special priorities assistance can be provided for any reason consistent with 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 otherwise ratable under this part. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority may be submitted on FEMA Form 009–0–142 (OMB control number 1660–0149) to FEMA. Form 009–0–142 may be obtained from the Delegate Agency or from FEMA.

[85 FR 28510, May 13, 2020, as amended at 86 FR 1292, Jan. 8, 2021]

§ 333.21 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items.

(b) *Rating authority for production or construction equipment.* (1) A request for

priority rating authority for production or construction equipment, if needed, must be submitted to the U.S. Department of Commerce on Form BIS-999.

(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, FEMA, 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 FEMA or 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 FEMA (or a Delegate Agency) and our use of that priority rating with our suppliers in no way commits the Delegate Agency, FEMA, or any other Federal 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, FEMA 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) FEMA 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 must promptly notify all suppliers who have received rated orders pursuant to the advance rating authority that the priority rating on those orders is cancelled.

§ 333.22 Examples of assistance.

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

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 333.23 Criteria for assistance.

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

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 333.24 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of FEMA or the Delegate Agency 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.

Subpart F—Allocation Actions

§ 333.30 Policy.

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

(c) When a hazard has occurred or is imminent, an allocation order may be used without regard to paragraphs (a) and (b) of this section whenever it is deemed by the Administrator to be necessary or appropriate to promote the national defense.

§ 333.31 General procedures.

Before FEMA uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*e.g.*, anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

§ 333.32 Controlling the general distribution of a material in the civilian market.

No allocation action by FEMA may be used to control the general distribution of a material in the civilian market unless the President, the Administrator, or another official with lawful authority under section 101(b) of the Act has made a written finding that:

(a) Such material is a scarce and critical material essential to the national defense, and

(b) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

§ 333.33 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions.

(a) *Set-aside*. A set-aside is an official action that requires a person to reserve

materials, services, or facilities capacity in anticipation of the receipt of rated orders.

(b) *Directive*. A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another.

(c) *Allotment*. An allotment is an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense.

§ 333.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons or by constructive notice through publication in the FEDERAL REGISTER. This section describes the elements that each order must include.

(a) *Elements to be included in all allocation orders*. (1) A detailed description of the required allocation action(s), including its relationship to previously or subsequently received DX rated orders, DO rated orders, and unrated orders.

(2) Specific start and end calendar dates for each required allocation action.

(b) *Elements to be included in orders issued directly to affected persons*. (1) A statement that reads in substance: “This is an allocation order certified for national defense use. [Insert the name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.”

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the FEMA Administrator.

(c) *Elements to be included in an allocation order that gives constructive notice through publication in the FEDERAL REGISTER*. (1) A statement that reads in

substance: “This is an allocation order certified for national defense use. [Insert the name(s) of the person(s) to whom the order applies or a description of the class of persons to whom the order applies] is (are) required to comply with this order, in accordance with the provisions of the Emergency Management Priorities and Allocations System regulations (44 CFR part 333), which is part of the Federal Priorities and Allocations System.”

(2) The order must be signed by the FEMA Administrator.

§ 333.35 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person must accept and comply with every allocation order received.

(b) A person must not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person’s terms and conditions for contracts and orders for the materials, services, or facilities 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 FEMA immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written, electronic confirmation must be provided within 24 hours. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by FEMA that the order has been changed or cancelled.

§ 333.36 Changes or cancellations of allocation orders.

An allocation order may be changed or cancelled by an official action from FEMA. Notice of such changes or cancellations may be provided directly to persons to whom the order being cancelled or modified applies or constructive notice may be provided by publication in the FEDERAL REGISTER.

Subpart G [Reserved]**Subpart H—Official Actions****§ 333.50 General provisions.**

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

(b) Some of these official actions (rating authorizations and letters and memoranda of understanding) are discussed in this subpart. Official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 333.61(c). Directives are discussed in § 333.52.

§ 333.51 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 § 333.21.

§ 333.52 Directives.

(a) A directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

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

(c) A priorities directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

(d) An allocations directive takes precedence over all priorities directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

§ 333.53 Letters and memoranda of understanding.

(a) A letter or memorandum of understanding is an official action, which may be issued electronically, to resolve special priorities assistance cases to reflect an agreement reached by all parties (FEMA, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer).

(b) A letter or memorandum 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 actions. Rather, letters or memoranda of understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart I—Compliance**§ 333.60 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 and related statutes, this part, or an official action. Compliance actions include audits, investigations, or other inquiries and FEMA may utilize other official actions, such as administrative subpoenas, demands for information, and inspection authorizations as part of the compliance actions under this part.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of FEMA, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in § 333.64 of this part.

§ 333.61 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 and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, FEMA must:

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

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

(c) In administering this part, FEMA 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 FEMA to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An administrative subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for information.* A demand for information requires a person to furnish to a duly authorized representative of FEMA any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of FEMA to interview the person's employees or agents; to inspect books, records, documents, other writings and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise; and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the De-

fense Production Act and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of FEMA 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 FEMA as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization must 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 must be made in the following manner:

(1) Service of a demand for information or inspection authorization must be made personally, or by certified mail—return receipt requested at the person's last known address. Service of an administrative subpoena must 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. When a hazard has occurred or is imminent, service of a demand for information or inspection authorization may additionally be made by written electronic communication.

(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 must be mailed to the person named in the document.

§ 333.62

(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 must be stated on the original document.

§ 333.62 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of FEMA to have access to any premises or source of information necessary to the administration or enforcement of the Defense Production Act and other applicable statutes, this part, or official actions, FEMA 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 Administrator, in consultation with the FEMA Chief Counsel, 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.

§ 333.63 Notification of failure to comply.

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

(b) In cases where FEMA determines that a person, either willingly or inadvertently, has failed to comply with the provisions of the Defense Production Act and other applicable statutes, this part, or an official action, the person may be informed in writing of the particulars involved and the corrective

44 CFR Ch. I (10–1–24 Edition)

action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act and other applicable statutes, this part, or an official action.

§ 333.64 Violations, penalties, and remedies.

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

(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 and other applicable statutes, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act and other applicable statutes, this part, and official actions, the following are prohibited (see section 705 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 and other applicable statutes, 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 and other applicable statutes, 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, re-delivered, held, or used in violation of the Defense Production Act and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify FEMA that, in accordance with this section, delivery has not been made.

§ 333.65 Compliance conflicts.

If compliance with any provision of the Defense Production Act and other

applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this part, or an official action, the person must immediately notify FEMA for resolution of the conflict.

Subpart J—Adjustments, Exceptions, and Appeals

§ 333.70 Adjustments or exceptions.

(a) A person may submit a request to FEMA 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, other applicable statutes, 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 from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the request is being considered unless such interim relief is granted in writing by FEMA.

(d) A decision of FEMA under this section may be appealed to the Administrator. (For information on the appeal procedure, see § 333.71.)

§ 333.71 Appeals.

(a) Any person who has had a request for adjustment or exception denied by FEMA under § 333.70 may appeal to the Administrator, who shall review and reconsider the denial. Such appeals should be submitted to the Office of Policy and Programs at *FEMA-DPA@fema.dhs.gov*, Ref: EMPAS Appeals.

(b)(1) Appeals of denied requests for exceptions from or adjustments to

compliance with the provisions of this part or an official action must be received by FEMA no later than 45 days after receipt of a written notice of denial from FEMA. After this 45-day period, an appeal may be accepted at the discretion of the Administrator.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness in response to a hazard that has occurred or is imminent, an appeal must be received by FEMA no later than 15 days after receipt of a written notice of denial.

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

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

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

(f) When determining an appeal, the Administrator may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to FEMA, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provisions of this part or official action in question while the appeal is being considered, unless such relief is granted in writing by the Administrator.

(h) The decision of the Administrator shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall

§ 333.80

be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart K—Miscellaneous Provisions

§ 333.80 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.

§ 333.81 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 part must be made available for examination on demand by duly authorized representatives of FEMA as provided in § 333.61.

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

(e) Under section 705(d) of the Act and the ultimate delegation of that authority to the FEMA Administrator, information obtained under section 705 of the Act which the Administrator 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 Administrator determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to FEMA in connection with the enforcement or administration of the

44 CFR Ch. I (10–1–24 Edition)

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 applicable Federal law.

§ 333.82 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 shall not be construed to affect any administrative actions taken by FEMA, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules, or delegations of authority issued by FEMA prior to May 13, 2020. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

§ 333.83 Communications.

General communications concerning this part, including how to obtain copies of this part and explanatory information, requests for guidance or clarification, may be addressed to FEMA's Office of Policy and Program Analysis at FEMA-DPA@fema.dhs.gov.

§ 333.84 Severability.

FEMA intends the various provisions of this part to be severable from each other to the extent practicable, such that if a court of competent jurisdiction were to vacate or enjoin any one provision, the other provisions are intended to remain in effect unless they are dependent upon the vacated or enjoined provision.

PART 334—GRADUATED MOBILIZATION RESPONSE

Sec.
334.1 Purpose.
334.2 Policy.