

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

(2) A DO rating and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating 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 "T9" must be used (*i.e.*, DO-T9).

(c) A person may combine DX- and DO-rated orders from one customer or several customers if the items or services 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 "T9" (*i.e.*, DO-T9 or DX-T9).

(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 § 33.32, are included on the order with the statement required in § 33.32(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 Transportation Priorities and Allocations System regulations at 49 CFR Part 33 only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 33.33 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to require preferential treatment for 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 § 33.80.

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

(f) A person is not required to place a priority rating on an order for less than \$75,000, or one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulations (FAR) (see FAR section 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.

#### § 33.38 Limitations on placing rated orders.

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

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

(i) Delivery or performance on a date earlier than needed;

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

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by the Department of Transportation (see § 33.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by the Department of Transportation, or as otherwise permitted by this part;

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

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(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 § 33.41); or

(vi) 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) *Jurisdictional limitations.* (1) Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(i) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(ii) All forms of energy (Resource agency with jurisdiction—Department of Energy);

(iii) Health resources (Resource agency with jurisdiction—Department of Health and Human Services);

(iv) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers); and

(v) All materials, services, and facilities, including construction materials the authority for which has not been delegated to other agencies under Executive Order 13603. (Resource Agency with jurisdiction—Department of Commerce);

(vi) Communications services (Resource agency with jurisdiction—National Communications System under Executive Order 12472 of April 3, 1984).

(2) [Reserved]

### Subpart D—Special Priorities Assistance

#### § 33.40 General provisions.

(a) TPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems

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will arise. In this event, a person should immediately contact DOT's Defense Production Act Activities Coordinator, Office of Intelligence, Security, and Emergency Response, 1200 New Jersey Avenue SE., Washington, DC 20590, for guidance or assistance. If the problem(s) cannot otherwise be resolved, special priorities assistance should be sought from the Department of Transportation through the Director, Office of Intelligence, Security, and Emergency Response, 1200 New Jersey Avenue SE., Washington, DC 20590. If the Department of Transportation is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Transportation may forward the request to another resource agency, as appropriate, for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form OST F 1254 (OMB control number to be inserted in the subsequent final rule) to the Defense Production Act Activities Coordinator, Office of Intelligence, Security, and Emergency Response, 1200 New Jersey Avenue SE., Washington, DC 20590. Form OST F 1254 may be obtained from the Department of Transportation or a Delegate Agency. A sample Form OST F 1254 is attached at Appendix I to this part.

#### § 33.41 Requests for priority rating authority.

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