

Differences Between the Proposal and the Related Service Bulletins

The proposed rule would differ from *Aerospatiale Service Bulletins ATR42-57-0044*, dated May 30, 1995, and Revision 1, dated June 28, 1995, in that it would not permit further flight following removal of corrosion. The FAA has determined that, due to the safety implications and consequences associated with the removal of small amounts of metal from the load-carrying structural elements of the rear spars of the wings (a normal and unavoidable result of the process of removing corrosion), the subject rear spars that are found to be corroded must be repaired prior to further flight. The repair would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$23,040, or \$1,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the rules docket. A copy of it may be obtained by contacting the rules docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 95-NM-140-AD.

Applicability: Model ATR42-200, -300, and -320 series airplanes, as listed in *Aerospatiale Service Bulletin ATR42-57-0044*, dated May 30, 1995, or Revision 1, dated June 28, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion on the rear spars of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time detailed visual inspection to detect corrosion of the rear spars of the wings, in accordance with *Aerospatiale Service Bulletin ATR42-57-0044*, dated May 30, 1995, or Revision 1, dated June 28, 1995.

(1) If no corrosion is detected, prior to further flight, apply a protective compound

to the areas specified in the service bulletin, in accordance with the service bulletin.

(2) If any corrosion is detected, prior to further flight, repair it in a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 95-127-063(B), dated August 2, 1995.

Issued in Renton, Washington, on September 25, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-25977 Filed 9-30-97; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 700

[Docket No. 970827205-7205-01]

RIN 0694-AA02

Defense Priorities and Allocations System

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Department of Commerce proposes to revise the Defense Priorities and Allocations System (DPAS) regulation by updating, modifying or clarifying a number of its provisions. The DPAS implements the priorities and allocations authority of Title I of the Defense Production Act of 1950, as amended, and the priorities authority of Section 18 of the Selective Service Act of 1948 and related authorities, as these authorities pertain to industrial resources.

Provisions to be modified include the time period within which a supplier must accept or reject a rated order, the order of precedence to be given to conflicting rated orders which have equal priority status, and the combining of defense rated requirements with commercial (unrated) requirements.

The Department also proposes to remove all controlled materials provisions and references from the DPAS because the controlled materials program (essentially an emergency preparedness measure) is obsolete and has been deactivated.

These revisions, including a number of other changes to update and clarify the text, are intended to improve the administration of the DPAS and make it more effective and efficient in the post-Cold War era.

The Department will consider public comment on these proposed revisions and on any other provision that may be hindering effective and efficient DPAS administration or implementation.

DATES: Comments must be received no later than October 31, 1997.

ADDRESSES: Address written comments (six copies) to Richard V. Meyers, DPAS Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230. The public record of this proposed rule will be available at the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, DPAS Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-3634, FAX (202) 482-5650, and E-Mail rmeyers@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The current Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700; formerly 15 CFR part 350) was published by the Department of Commerce as a final rule on July 30, 1984 (49 FR 30412), superseding the regulations of the Defense Materials System and Defense Priorities System. The DPAS regulation implements the priorities and allocations authority of Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), and the priorities authority of Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C.

2538 and 2539, and 50 U.S.C. 82, as these authorities pertain to industrial resources.

The Department has received a number of oral and written comments suggesting the need to modify or clarify several provisions of the DPAS which relate to: (1) The time period within which a supplier must accept or reject a rated order [section 700.13(d)(1)]; (2) the order of precedence to be given by contractors and suppliers to conflicting rated orders of equal priority status (section 700.14); and (3) the combining by a contractor of defense rated requirements with commercial (unrated) requirements on one purchase order to a supplier [section 700.17(d)]. Accordingly, for the reasons discussed in the PROPOSED REVISIONS section below, the Department proposes to revise these DPAS rules.

The Department also proposes to remove the controlled materials provisions from the DPAS (sections 700.30-700.31) and delete all other references to the program from throughout the regulation for the following reasons.

During World War II and the Korean War, the production and distribution of certain critical materials called "controlled materials"—steel, copper, and aluminum—were managed under Controlled Materials Plans. From 1953 to 1988, these materials, with nickel alloys added in 1958, continued to be subject to government allocations regulations.

A 1987 Department of Commerce study of the controlled materials program found that the program had little relevance to current defense requirements for the controlled materials or to the current ability of industry to supply the controlled materials to meet these requirements. The study recommended that the controlled materials procedures be deactivated. An interagency committee, comprised of Commerce and three of the DPAS Delegate Agencies (Federal Emergency Management Agency and the Departments of Defense and Energy), concurred with this recommendation. Action was subsequently taken by these agencies to deactivate the program, including action by Commerce to discontinue the information collection burden imposed upon controlled materials producers, distributors, and users to supply information about controlled materials requirements and shipments. This information was used to support administration of the controlled materials program.

Finally, the Department proposes to make various jurisdictional, technical, administrative, and miscellaneous

revisions to a number of DPAS provisions to address changes to delegated authority, to incorporate the delegation of additional authority, to update and clarify the text, and to improve generally the administration, effectiveness, and efficiency of the DPAS in support of our nation's post-Cold War defense requirements and its ability to respond fully to a national security or major disaster emergency situation.

Proposed Revisions

Proposed revisions to the DPAS regulation are described in the following section-by-section analysis.

1. Customer Notification of Acceptance or Rejection of Rated Orders

Section 700.13(d) (Customer notification requirements) of the current DPAS requires a supplier to accept or reject a rated order in writing within ten (10) working days after receipt of a DO rated order and within five (5) working days after receipt of a DX rated order. Subcontractors and suppliers have complained that it is very difficult to comply with this requirement due to production scheduling complexities and other administrative factors.

The proposed rule would revise subparagraph (1) of section 700.13(d) by extending the time within which a person must accept or reject a rated order by five (5) working days. Accordingly, a person must accept or reject a rated order 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. The Department believes that this change will not significantly impact upon the timely delivery of items against these orders.

The revised subparagraph would also specifically reference electronic data interchange of the acceptance or rejection of rated orders. Electronic placement of rated orders is acceptable provided that the transmission complies in substance with section 700.12 (Elements of a rated order). This section would also be revised to reference the electronic placement of rated orders.

2. Precedence of Rated Orders of Equal Priority Status

A number of companies have requested clarification of the preference to be given to rated orders which have equal priority status (DX or DO) when production scheduling conflicts or other problems arise following acceptance of the rated orders.

The proposed rule would revise paragraph (c) of section 700.14 (Preferential scheduling) of the current

DPAS to provide that if a person finds that production, delivery, or performance against any accepted rated orders conflicts with production, delivery, or performance against any other accepted rated orders of equal priority status, preference shall be given to the conflicting rated orders in the sequence in which they were received (not to the required delivery dates). However, if the conflicting rated orders were received on the same day, the person shall give preference to those orders which have the earliest delivery dates. If under these rules, the production, delivery, or performance conflicts cannot be resolved, or if the customer objects to the rescheduling of the customer's rated order, the proposed rule provides that special priorities assistance should be requested promptly under sections 700.50–700.54 of the DPAS.

Some of the confusion over preferential scheduling appears to have been caused by including paragraph (c) in section 700.14 (Preferential scheduling) of the current DPAS. This paragraph covers acceptance or rejection of rated orders of equal priority status received on the same day. The proposed rule would incorporate this paragraph into section 700.13 (Acceptance and rejection of rated orders).

3. Combining Defense Rated Requirements With Commercial (Unrated) Requirements

Paragraph (d) of section 700.17 (Use of rated orders) of the current DPAS permits a contractor to combine rated and unrated order quantities on a purchase order to a supplier provided that the rated quantities are clearly and separately identified. These quantities must also be contained in a separate rated order which conforms to the requirements of section 700.12 (Elements of a rated order). A special statement and the physical attachment of the separate rated order to the combined order are also required. A number of companies have complained that the requirement for a separate rated order is expensive to implement, an administrative burden, and incompatible with their automated procurement systems.

The proposed rule would eliminate the requirement for a separate rated order but would retain the requirement for clear and separate identification of rated order quantities. It also would require a special statement on the combined purchase order to notify the supplier that the order contains rated quantities certified for national defense use and that the provisions of the DPAS apply only to the rated quantities. This

change should contribute to contractor efficiency and cost savings while minimizing the possibility of supplier confusion. The growing commercialization of defense procurement and the development of dual-use products and technology further underscores the need for this change.

4. National Security Emergency Preparedness and Removal of the Controlled Materials Provisions

The proposed rule would remove from the DPAS all provisions and references pertaining to the controlled materials, including the controlled materials information in section 700.4 of Subpart B (Overview), the definitions relating to controlled materials in section 700.8, the special rules for controlled materials in Subpart F (sections 700.30–700.31), and the authorized programs for controlled materials (C8 and H2–H4) listed in Schedule 1 to Part 700. Also removed would be Schedule II to Part 700, which lists the controlled materials, Schedule III to Part 700, which defines the controlled materials, and Schedules IV and V to Part 700, which establish the set-aside base and percentages for copper and nickel alloys producers.

The heading of Subpart F would be renamed "National Security Emergency Preparedness and Critical Items.", and the heading of section 700.30 would be retitled "Priorities and Allocations in a National Security Emergency." The text of section 700.30 would be revised to provide a statement as to how the DPAS may be expanded in a national security emergency to ensure rapid industrial response and the timely availability of critical industrial items and facilities to meet the urgent defense or major disaster emergency requirements of approved programs.

Included is a discussion of emergency official actions, the allocation of critical and scarce items and facilities to meet emergency requirements, and the delegation of authority under the DPAS to the Regional Emergency Coordinators in the ten Standard Federal Region Council cities in the event that communications with Commerce headquarters in Washington, D.C. is severed as a result of the emergency.

Section 700.4 in Subpart B (Overview) would also be revised to summarize the revised Subpart F, with the section heading retitled "Priorities and Allocations in a National Security Emergency."

In Subpart G, section 700.40 (General provisions) would be removed and section 700.41 (Metalworking machines) would be moved into Subpart F and

redesignated as section 700.31. Subpart G would be "Reserved" for future use.

The removal of the controlled materials provisions would necessitate amendment of DPAS Delegation 1 to the Secretary of Defense (Appendix I to Part 700) and the Memorandum of Understanding on Priorities and Allocations Support Between the U.S. Department of Commerce and the Canadian Public Works and Government Services Canada (formerly Department of Supply and Services) (Appendix IV to Part 700) to delete references to the controlled materials program within these documents.

5. New Approved Programs

The proposed rule would revise Schedule 1 to the current DPAS to retitle it "Approved Programs and Delegate Agencies", to include two new programs, "Special Projects" and "Food Resources (combat rations)", and to change the "N1" Federal Emergency Management Agency program name to "Emergency Preparedness Activities".

The "Special Projects" program would be assigned to the Department of Commerce as Delegate Agency and identified by the Program Identification Symbol "H8". It would provide the Department with greater administrative flexibility in authorizing the use of priority ratings, as needed on a case-by-case basis by non-Delegate Agencies to support defense related procurement, where use of a current approved program identification would not be appropriate. Such priority rating authority would be granted only after establishing the appropriate national defense or civil emergency preparedness nexus for the project in consultation with the Department of Defense (DOD), Department of Energy, or Federal Emergency Management Agency, as provided under section 202 of E.O. 12919.

The "Food Resources (combat rations)" program would be assigned to DOD as Delegate Agency and identified by the Program Identification Symbol "C1". This would enable DOD to place rated orders under the DPAS for food resources to meet troop support requirements for combat rations under the authority delegated to DOD by Commerce in DPAS Delegation 1 (see Appendix I to Part 700). This program was established by agreement between the Departments of Commerce and Agriculture, dated January 28, 1991, and approved by FEMA on February 1, 1991 (see Attachment A to DPAS Delegation 1). It is consistent with the Memorandum of Understanding between the Departments of Agriculture and Commerce Concerning Priorities

and Allocations Jurisdiction and Responsibilities for Foods Which Have Industrial Uses and the Domestic Distribution of Farm Equipment (see Appendix II to Part 700).

The "N1" program name change would reflect the expansion of Defense Production Act (Title I) priorities and allocations authority to cover emergency preparedness activities as provided under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act) (42 U.S.C. 5195, *et seq.*).

6. Other Revisions

Because of recent amendments to the Defense Production Act, the Stafford Act, and the issuance and subsequent amendment of Executive Order 12919 (revision of Executive Order 10480), technical revisions to several sections of the DPAS, including section 700.18(b)(1) (Jurisdictional limitations), are required. The proposed rule sets forth these changes.

Also, on January 8, 1991, priorities authority with respect to industrial resources was delegated to the Department of Commerce under the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82 by Executive Order 12742 (56 FR 1079). The proposed rule would incorporate a reference to these authorities where appropriate, throughout the regulation.

Finally, the proposed rule would make various other technical, administrative, and miscellaneous changes to the current DPAS rules. Among these revisions are improvements to the clarity of the text in section 700.2(b) (Introduction) and subparagraph (2) of section 700.13(d) (Customer notification requirements), and increasing the minimum rated order amount from \$5000 to \$100,000 in paragraph (f) of section 700.17 (Use of rated orders) to conform with the current simplified Federal Acquisition Regulation small order acquisition threshold. Revision of section 700.21 (Application for priority rating authority) in Subpart E (Industrial Priorities for Energy Programs), section 700.72 (Compulsory process), section 700.80 (Adjustments or exceptions), section 700.81 (Appeals), and section 700.93 (Communications), is necessary to reflect office name, address, telephone number, and Departmental organization changes.

7. Appendices to Part 700

All DPAS Appendices (Appendix I—DPAS Delegations of Authority to the Departments of Defense and Energy, the General Services Administration, and

the Federal Emergency Management Agency; Appendix II—Interagency Memoranda of Understanding with the Departments of Agriculture, Energy, and the Interior; Appendix III—Form ITA-999—Request for Special Priorities Assistance; and Appendix IV—Memorandum of Understanding on Priorities and Allocations Support Between the U.S. Department of Commerce and the Canadian Department of Supply and Services) require updating and revision to address various substantive and technical changes, including changes in statutory and delegated authority and removal of obsolete provisions. Of special note is an expanded restriction in each of the DPAS Delegations of Authority on the use of rated orders by the Delegate Agencies to support procurement of any items which are commonly available in commercial markets for general consumption, do not require major modification when purchased for approved program use, and are readily available in sufficient quantity so as to cause no delay in meeting approved program requirements.

A new Appendix V (DPAS Emergency Documents) will be added, containing, for information purposes only, DPAS Emergency Delegation 1. This document will delegate authority to the Regional Emergency Coordinators in the ten Federal Regional Council cities to administer the DPAS if a catastrophic national security emergency situation severs communications with Department of Commerce headquarters in Washington, D.C.

Because the documents in these Appendices are of limited public interest, they will not be published in draft for public comment. They will, however, be reviewed by all involved departments and agencies and copies of the executed originals will be published with the Notice of Final Rulemaking.

Public Comment Requested

Public comment on the sufficiency and reasonableness of these proposed revisions is solicited. In addition, comments are solicited concerning any other DPAS provision. The Department's objective is to ensure that the DPAS is effective, efficient, easy to understand and use, and properly designed not only to ensure the timely delivery of industrial resources in support of current national defense programs with minimal disruption to normal commercial activities, but also to support future emergency requirements.

Section 709 of the Defense Production Act exempts the promulgation of rules and regulations from the rulemaking

procedures of the Administrative Procedure Act (5 U.S.C. 551-559). However, the Defense Production Act does require **Federal Register** publication of these proposed revisions and opportunity for public comment, consistent with the requirements 5 U.S.C. 553(b). Therefore, all persons who desire to comment are encouraged to do so at the earliest possible time to receive the fullest consideration of their views. Only those comments received on or before October 31, 1997 will be considered.

In the interest of accuracy and completeness, the Department requires written comments (six copies) which should be sent to the address indicated in the address section above. Oral comments should be directed to Richard V. Meyers, DPAS Program Manager [tel.: (202) 482-3634], and must be followed by written memorandum to Mr. Meyers. All such written comments and memoranda will be placed in the public rulemaking docket and will be available for public review and copying. However, communications from agencies of the U.S. Government or foreign governments will not be made available for public inspection. Written comments accompanied by a request that part or all of the material contained be treated confidentially will not be considered in developing the final rule. Such comments and materials will be returned to the submitter.

The public rulemaking docket concerning this regulation will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, at the address indicated in the address section above. Records in this facility may be inspected and copied in accordance with regulations published in 15 CFR part 4. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, at the Records Inspection Facility, or by calling (202) 482-5653.

Rulemaking Requirements

The Department has made certain determinations with respect to the following rulemaking requirements:

1. Classification Under E.O. 12866

This proposed revision of the current DPAS regulation (15 CFR part 700) has been determined to be "not significant" for the purpose of Executive Order 12866.

2. Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy, Small

Business Administration, that this proposed rule to revise the DPAS, if adopted, will not have a significant economic impact on a substantial number of small entities. These revisions would merely update, modify, or clarify a number of provisions to make the current DPAS more effective and efficient in the post Cold War era. Many of the proposed changes are being made in response to comments and recommendations received from the business community, thus ensuring that the updated DPAS will conform to current business practices and enable all business entities subject to its requirements to increase the efficiency of their operations and realize certain cost savings. In addition, some DPAS provisions must be revised to conform the regulation to recent statutory and organizational changes while other provisions must be deleted because they are obsolete.

Because of the self-administered nature of the DPAS, there is no way to accurately estimate the number of business entities throughout the U.S. industrial base to whom the DPAS is applicable. However, it has been roughly estimated that there are at least 18,000 business entities during any one year that on at least one or more occasions must respond to its requirements. It is also estimated that given the nature of defense production, relatively few of these entities are small entities.

The DPAS regulation has been in effect since 1984 and is the successor to priorities and allocations regulations that were first promulgated in the mid-1950s. Thus, most business entities engaged in defense production under the DPAS, including small entities, can and do respond to applicable DPAS requirements in the ordinary course of their business with very little, if any, economic impact. The DPAS revisions, in and of themselves, would impose no economic impact on any business entity, including small entities, and if adopted, will further reduce whatever minimal economic impact is associated with DPAS compliance.

3. Paperwork Reduction Act

The information collection requirements imposed by the DPAS regulation have been submitted to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) (OMB Control Number 0694-0053). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply

with these information collection requirements unless the information collection displays a currently valid OMB Control Number.

The collection of information requirements in the DPAS apply to all persons who receive priority rated orders under the DPAS. These requirements are necessary to support proper administration of the DPAS and ensure its effectiveness and efficiency. The total annual public burden per respondent for this collection of information is estimated at 14,476.5 hours. This estimate includes (a) 11,667 total extra record keeping hours to create a record of the receipt of a priority rated order (700,000 priority rated orders annually \times 1 minute per order); (b) 972 total hours to provide notice of acceptance of a priority rated order (699,650 priority rated orders accepted annually \times 5 seconds per order); (c) 87.5 total hours to provide notice of rejection of a priority rated order (350 total priority rated orders rejected annually \times 15 minutes per order); and (d) 1,750 total hours to provide notice of delayed delivery against a priority rated order (7000 total priority rated orders annually against which delivery will be delayed \times 15 minutes per order).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of agency functions, which includes proper administration of the DPAS and ensuring its effectiveness and efficiency; (b) the accuracy of the public burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to further minimize the public information collection burden, including the use of automated collection techniques or other forms of information technology. Written comments should be sent within 30 days of publication of this Notice in the **Federal Register** to Ms. Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20230; and to Mr. Stephen Baker, BXA Information Collection Officer, Room 6877, U.S. Department of Commerce, Washington, D.C. 20230.

4. Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

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, part 700 of Subchapter A, National Security Industrial Base Regulations (15 CFR part 700), is proposed to be amended as follows:

1. The authority citation for 15 CFR part 700 is revised to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), and Executive Order 12919 of June 3, 1994 (59 FR 29525), as amended; Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468), 10 U.S.C. 2538 and 2539, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991 (56 FR 1079), as amended; and Executive Order 12656 of November 18, 1988 (53 FR 226), as amended.

PART 700—[AMENDED]

2. Section 700.1 is amended:
 - a. By revising the phrase "materials and facilities" to read "materials, services, and facilities", and revising the phrase "materials and equipment" to read "materials, equipment, and services", in paragraph (a);
 - b. By revising paragraph (b);
 - c. By redesignating paragraph (c) as paragraph (e); and
 - d. By adding new paragraphs (c) and (d); as follows:

§ 700.1 Purpose of this regulation.1

* * * * *

(b) Section 18 of the Selective Service Act of 1948 (50 U.S.C. app. 468) (Selective Service Act) authorizes the President to place an order with a supplier for any articles or materials required for the exclusive use of the U.S. armed forces whenever the President determines that in the interest of national security, prompt delivery of the articles and materials is required. The supplier must give precedence to the order so as to deliver the articles or materials in a required time period. 10 U.S.C. 2538 and 2539, and 50 U.S.C. 82, provide similar authority specifically for Department of Defense procurement, but only in time of war or when war is imminent.

(c) Section 602(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(b)) provides that the terms "national defense" and "defense" as used in the Defense Production Act includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act. The definition of "national defense" in Section 702(13) of the

Defense Production Act provides that this term includes "emergency preparedness activities" conducted pursuant to Title VI of the Stafford Act.

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

* * * * *

3. Section 700.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including emergency preparedness activities) are approved for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are "approved programs." A complete list of currently approved programs is provided at Schedule 1 to this regulation.

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

* * * * *

§ 700.3 [Amended]

4. Section 700.3(a) is amended by revising the term "authorized program" to read "approved program".

5. Section 700.4 is amended:

- a. By revising the section heading;
- b. By revising paragraphs (a) and (b); and
- c. By removing paragraphs (c), (d), and (e); as follows:

§ 700.4 Priorities and allocations in a national security emergency.

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

(b) The special rules established in response to the emergency may include provisions for the taking of certain emergency official actions and the

allocation of critical and scarce materials and facilities.

6. Section 700.7(a) is amended by adding the phrase "and the Selective Service Act and related statutes" following the phrase "the Defense Production Act".

7. Section 700.8 is amended:

a. By removing the following definitions: "Authorized program", "Controlled materials", "Controlled materials suppliers", "Distributors of controlled materials", "Further conversion", "Lead time", "Minimum mill quantity", and "Person";

b. By amending the definition of "Delegate Agency", revising the term "authorized programs" to read "approved programs";

c. By amending the definition of "Official action", adding a comma followed by the phrase "the Selective Service Act and related statutes," following the phrase "the Defense Production Act,";

d. By amending the definition of "Rated order", revising the term "authorized program" to read "approved program"; and

e. By revising the introductory sentence after the section heading, and adding new definitions in alphabetical order; as follows:

§ 700.8 Definitions.

In addition to the definitions provided in Section 702 of the Defense Production Act, the following definitions pertain to all sections of the regulation:

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

* * * * *

Person. 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 regulation, includes the United States Government and any foreign government or agency thereof, delegated authority under this regulation.

* * * * *

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

10 U.S.C. 2538 and 2539, and 50 U.S.C. 82.

* * * * *

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

8. Section 700.10 is amended:

- a. By revising paragraph (a); and
- b. By revising the phrase "Office of Industrial Resource Administration" to read "Office of Strategic Industries and Economic Security", and revising the phrase "authorized programs" to read "approved programs", in paragraph (b); as follows:

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in 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), as amended. The priorities authorities given to the President in the Selective Service Act and related statutes with respect to industrial resources, have also been given delegated to the Secretary of Commerce under Executive Order 12742 of January 8, 1991 (56 FR 1079), as amended.

* * * * *

§ 700.11 [Amended]

9. Section 700.11(b) is amended by revising the term "authorized programs" to read "approved programs".

10. Section 700.12 is amended by revising paragraph (c) to read as follows:

§ 700.12 Elements of a rated order.

* * * * *

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

* * * * *

11. Section 700.13 is amended:

- a. By adding a new paragraph (b)(4);
- b. By removing paragraphs (c)(5), (c)(6), and (c)(7);
- c. By redesignating paragraph (c)(8) as paragraph (c)(5) and amending redesignated paragraph (c)(5) by adding the phrase "or the Selective Service Act and related statutes" following the phrase "the Defense Production Act";
- d. By revising paragraph (d); and
- e. By adding an OMB control number; as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(b) Mandatory rejection. * * *

(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.

* * * * *

(d) *Customer notification requirements.* (1) A person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing (not electronically) for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

[The information collection requirements in paragraphs (d)(1) and (d)(2) are approved by the Office of Management and Budget under control number 0694-0053.]

12. Section 700.14 is amended by revising paragraph (c) to read as follows:

§ 700.14 Preferential scheduling.

* * * * *

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

(2) If a person is unable to resolve rated order production, delivery, or performance conflicts under these rules, the person should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. If the person's customer objects to the rescheduling of

a rated order, the customer should promptly seek special priorities assistance as provided in §§ 700.50 through 700.54. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 700.13(d)(2).

* * * * *

13. Section 700.17 is amended:

a. By removing the parenthetical phrase "(except as provided in § 700.31(d)—Controlled materials program identification symbols)" in paragraph (b)(2);

b. By removing the parenthetical phrase "(not applicable to controlled materials producers)" in paragraph (b)(3);

c. By removing the phrase found at the end of the paragraph, "except as provided in § 700.31(d) (Controlled materials program identification symbols)", in paragraph (c).

d. By revising paragraph (d)(1);

e. By redesignating paragraph (d)(2) as (d)(3);

f. By adding a new paragraph (d)(2); and

g. By revising paragraph (f); as follows:

§ 700.17 Use of rated orders.

* * * * *

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

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

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

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

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 700.13 and give preferential treatment only to the rated quantities as required by this regulation. This regulation may not be used to give preferential treatment to the unrated portion of the order.

* * * * *

(f) A person is not required to place a priority rating on an order for less than \$100,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

14. Section 700.18 is amended:

a. By adding a new paragraph (a)(2)(v);

b. By revising paragraph (b)(1); and

c. By removing the first item listed, "communication services", and the parenthetical phrase, "(as defined in Schedule III)" which follows the item, "Copper raw materials", in paragraph (b)(3); as follows:

§ 700.18 Limitations on placing rated orders.

(a) * * *

(2) * * *

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons.

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Orders 12919 and 12742, other executive order, or Interagency Memoranda of Understanding to other agencies. Unless otherwise agreed to by the concerned agencies, the provisions of this regulation are not applicable to these items which include:

(i) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture—see Attachment A to DPAS Delegation 1 in Appendix I to Part 700 concerning combat rations);

(ii) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Department of Energy);

(iii) Health resources (Department of Health and Human Services);

(iv) All forms of civil transportation (Department of Transportation);

(v) Water resources (Department of Defense/U.S. Army Corps of Engineers);

(vi) Communications services (National Communications System under Executive Order 12472 of April 3, 1984); and

(vii) Mineral resources and mineral processing facilities (Department of the Interior/U.S. Geological Survey—see Memorandum of Understanding Between Interior and Commerce in DPAS Appendix II to Part 700).

* * * * *

15. Section 700.21 is amended:

a. By revising paragraph (a);

b. By revising the phrase "materials or equipment" to read "materials, equipment, or services" in paragraphs (b)(2), (c) introductory text, (c)(1) introductory text, and (d); and

c. By revising the term "authorized programs" to read "approved programs" in paragraph (f); as follows:

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the U.S. Department of Energy, Office of Clearance and Support, Field/Headquarters Support Division, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Attn.: PR-132.

* * * * *

16. Subpart F is amended:

- a. By revising the Subpart heading;
- b. By revising § 700.30; and
- c. By removing § 700.31; as follows:

Subpart F—National Security Emergency Preparedness and Critical Items**§ 700.30 Priorities and allocations in a national security emergency.**

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

(1) *National security emergency.* A “national security emergency” is defined in section 101(a) of E.O. 12656 (November 18, 1988), as amended, as any occurrence, including a natural disaster or an accidental or man-caused major disaster event such as military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national or economic security of the United States.

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

(ii) Emergency official actions may include:

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

(B) Restricting the purchase, use, or distribution of critical and scarce

defense and/or emergency preparedness items, or the use of production or distribution facilities, for non-essential purposes; and

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

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

(ii) Allocation rules (i.e., controlled materials programs) were established in response to previous periods of national security emergency such as World War II and the Korean Conflict. The basic elements of the controlled materials programs were the set-aside (the amount of an item for which a producer or supplier must reserve order book space in anticipation of the receipt of rated orders), the production directive (requires a producer to supply a specific quantity, size, shape, and type of an item within a specific time period), and the allotment (the maximum quantity of an item authorized for use in a specific program or application). These elements can be used to assure the availability of any scarce and critical item for approved programs. Currently, a set-aside applies only to metalworking machines (see § 700.31).

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

(b) *Regional Emergency Coordinators.*

(1) If due to a catastrophic national security emergency event, communications with Commerce headquarters in Washington, D.C. are severed, DPAS Emergency Delegation 1 will provide authority to the Regional Emergency Coordinators (REC) located in the Standard Federal Region Council cities (Boston, New York, Philadelphia, Atlanta, Dallas, Kansas City, Chicago,

Denver, San Francisco, and Seattle) to represent the Secretary of Commerce, and as necessary, act for the Secretary to carry out the emergency industrial production and distribution control functions of Commerce as set forth in this regulation, in any supplement thereto, or other applicable authority. See DPAS Emergency Delegation 1 (Appendix V to Part 700) for further information about the authority and duties of the RECs, and the effective date of the Delegation.

(2) If DPAS Delegation 1 is implemented due to a catastrophic national security emergency event, requests for special priorities assistance under sections 700.50–55 of this regulation should be filed with the nearest Regional Emergency Coordinator located in one of the Standard Federal Region Council cities as provided in DPAS Delegation 1 (Appendix V to Part 700).

17. Subpart G is amended:

- a. By removing § 700.40;
- b. By redesignating § 700.41 as § 700.31 in Subpart F; and
- c. By removing the subpart heading and reserving Subpart G for future use; as follows:

Subpart G—[Reserved]

18. Section 700.50(c) is amended by revising the term “ITA-999” to read “BXA-999” each of the three times it appears in the paragraph; by revising the term “(OMB #0625-0015)” to read “(OMB #0694-0057)”; and by removing the comma followed by the phrase “any Commerce District Office”.

19. Section 700.54 is amended by revising the section heading and the second sentence of the introductory text, as follows:

§ 700.54 Instances where assistance may not be provided.

* * * * *

Examples where assistance may not be provided include situations when a person is attempting to:

* * * * *

§ 700.55 [Amended]

20. Section 700.55 is amended:

- a. By revising the term “authorized programs” to read “approved programs” in paragraph (a);
- b. By revising the term “Canadian Department of Supply and Services” to read “Canadian Public Works and Government Services Canada” in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6); and
- c. By revising the term “ITA-999” to read “BXA-999” in paragraph (b)(6).

§§ 700.70, 700.71, 700.72, 700.23, 700.75, 700.80, 700.91 [Amended]

21. The phrase "the Selective Service Act and related statutes," is added following the phrase "the Defense Production Act," wherever it appears in the following places:

Sec.
700.70(a)
700.71(a)
700.71(c)(1)
700.71(c)(2)
700.71(c)(3)
700.72(a)
700.73(a)
700.73(b)
700.75
700.80(a)(2)
700.91(d)

22. Section 700.72(b) is amended by revising the term "Assistant General Counsel for International Trade" to read "Chief Counsel for Export Administration".

23. Section 700.74 is amended:

- By revising paragraph (a);
- By removing paragraph (b);
- By redesignating paragraph (c) as paragraph (b), and paragraph (d) as paragraph (c); as follows:

§ 700.74 Violations, penalties, and remedies.

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

* * * * *

24. The term "Office of Industrial Resource Administration" is revised to read "Office of Strategic Industries and Economic Security" in the following places:

§§ 700.80, 700.81, 700.93 [Amended]

Sec.
700.80(a)
700.80(c)
700.80(d)
700.81(a)
700.81(b)
700.93

25. The phrase "Assistant Secretary for Trade Administration" is revised to read "Assistant Secretary for Export Administration" in the following places:

Sec.
700.80(d)
700.81(a)

700.81(b)
700.81(d)
700.81(e)
700.81(f)
700.81(g)
700.81(h)

26. Section 700.81(b) is amended by revising the term "International Trade Administration" to read "Bureau of Export Administration".

27. Section 700.91(a) is amended by revising the term "(OMB #0625-0107)" to read "(OMB #0694-0053)".

28. Section 700.93 is amended by revising the phrase "telephone: (202) 377-4506" to read "telephone: (202) 482-3634, or FAX: (202) 482-5650".

Schedule 1 to Part 700—[Amended]

29. Schedule 1 to Part 700 is amended:

a. By revising the column heading "Authorized Program" to read "Approved Program"; and by revising the title of the Schedule and the first paragraph of the two paragraph explanation of the Schedule;

b. By removing the following program identification symbols and associated authorized program names from the Schedule: "C8—Controlled materials for Defense Industrial Supply Center (DISC)", "H2—Controlled materials producers", "H3—Further converters (controlled materials)", and "H4—Distributors of controlled materials";

c. By removing the term "Federal Aviation Administration" from the list of Associated Agencies of the Department of Defense contained in footnote 1;

d. By adding the following program identification symbols and associated approved program names to the Schedule: "C1—Food resources (combat rations)" under the "Defense Programs" heading; and "H8—Special projects", under the "Other Defense, Energy and Related Programs" heading;

e. By revising the "Other Energy Programs" heading to read: "Domestic Energy Programs"; and revising the "F3" program name "Construction and Maintenance" to read: "Construction, repair, and maintenance"; and

f. By revising the "N1" program name "Approved civil defense programs" to read "Emergency Preparedness Activities"; as follows:

Defense Priorities and Allocations System*Schedule 1 to Part 700—Approved Programs and Delegate Agencies*

The programs listed in this schedule have been approved for priorities and allocations support under this

regulation. They have equal preferential status.

* * * * *

Schedule II to Part 700—[Amended]

30. Schedule II to part 700 (Controlled Materials), Schedule III to part 700 (Technical Definitions of Controlled Materials Products), Schedule IV to part 700 (Copper Controlled Materials Producers' Set-aside Base and Percentages), and Schedule V to part 700 (Nickel Alloys Controlled Materials Producers' Set-aside Base and Percentages) are removed.

Issued: September 29, 1997.

William V. Skidmore,

Assistant Secretary (Acting) for Export Administration.

[FR Doc. 97-26109 Filed 9-30-97; 8:45 am]

BILLING CODE 3510-DT-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[OPP-300558; FRL-5746-3]

RIN 2070-AC18

Various Inert Ingredients; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate; polyvinyl pyrrolidone butylated polymer; vinyl pyrrolidone-acrylic acid copolymer; maleic anhydride-diisobutylene copolymer, sodium salt; vinyl alcohol-vinyl acetate copolymer, benzaldehyde-*o*-sodium sulfonate condensate when used as inert ingredients in pesticide formulations applied to growing crops, crops after harvest, and/or animals. EPA is proposing this regulation on its own initiative.

DATES: Comments, identified by the docket control number [OPP-300558], must be received on or before December 1, 1997.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.