

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Lubbock Exec Airpark, Lubbock, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2024-0775 in the **Federal Register** (89 FR 34171; April 30, 2024), proposing to establish the Class E airspace at Lubbock, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

An FAA database review noted that the incorrect coordinates were used in the NPRM. This final rule replaces the incorrect coordinates with the correct coordinates, Lat 33°29'01" N, long 101°48'46" W. This action does not change the airspace dimensions or operating requirements.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023 and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 6.7-mile radius of Lubbock Exec Airpark, Lubbock, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H,

Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Lubbock, TX [Establish]

Lubbock Exec Airpark, TX
(Lat 33°29'01" N, long 101°48'46" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Lubbock Exec Airpark.

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Issued in Fort Worth, Texas, on July 16, 2024.

Steven Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

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DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 700**

[Docket No240628-0180]

RIN 0694-AJ15

Clarifications and Updates to Defense Priorities and Allocations System Regulation

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

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is finalizing amendments to its Defense Priorities and Allocations System (DPAS) regulation as originally proposed on February 7, 2024 with minor technical amendments. This final rule clarifies existing standards and procedures by which BIS may provide Special Priorities Assistance (SPA); revises Schedule I to provide transparency and differentiation between other departments' priorities jurisdiction and the Department of Commerce's jurisdiction; and provides technical edits to reflect certain non-substantive updates since the DPAS regulation was last amended in 2014, including updated contact information, legal citations, and definitions. The two technical amendments are made to accurately reflect updated information sourced from other Federal agencies.

DATES: This final rule is effective August 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Katie Reid at (202) 482-3634, *DPAS@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:**Background**

On February 7, 2024 in 89 FR 8363, the Bureau of Industry and Security (BIS) proposed to update the priorities and allocations provisions set forth in the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) and implemented by the Department of Commerce (DOC), BIS, consistent with its authorities under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*) (DPA), as delegated by Executive Order 13603 (March 16, 2012).

The DPAS has two principal components, priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term “national defense” means programs for military and energy production or construction, homeland security, stockpiling, space, emergency preparedness, critical infrastructure protection and restoration, and any directly related activity. The term also includes military and critical infrastructure assistance to any foreign nation.

Section-by-Section Analysis of the Clarifications and Updates That This Final Rule Makes to the Existing DPAS Regulation

The following discussion explains the changes that this final rule makes to the existing DPAS regulation.

Subpart A—Purpose

Section 700.1—Purpose of this part. This section adds the legal citation for the DPA and updates the legal citation for the Robert T. Stafford Disaster Relief Emergency Assistance Act. This rule also makes minor changes to the language to be consistent with the DPA and Executive Order (E.O.) 13603.

Subpart B—Overview

Section 700.2—Introduction. This section changes the reference to “industrial items” to “industrial resources” in paragraph (b) in order to use the term “industrial resources” defined in § 700.8. It also revises paragraph (c) to highlight that the DOC is also listed as an agency in Schedule I and the reason why. BIS believes that

the additional information provides a more complete description of Schedule I.

Section 700.3—Priority ratings and rated orders. This section adds in paragraph (a) references to the rating symbol to conform with the current definition of priority rating in section 700.8 as well as a description of a rating symbol. BIS makes these changes so that paragraph (a) will give a more complete description of a priority rating. It also revises paragraph (d) of this section by changing “items” to “industrial resources” in order to use the term “industrial resources” defined in section 700.8.

Subpart C—Definitions

Section 700.8—Definitions. This section updates the legal citation for the DPA found in the definition of “Defense Production Act.” It updates the legal citation for the Stafford Act found in the definitions of “national defense” and “Stafford Act,” and it updates the legal citation for the Selective Service Act found in the definition of “Selective Service Act.” This section updates both the definition of “approved program” and “priorities authority,” which is consistent with the language of the DPA and E.O. 13603. It also updates the definition of “priority rating” to clarify that the DOC may assign the priority rating, which is consistent with 15 CFR part 700. It removes the definition of “item” and updates the definition of “industrial resources” to clarify and be consistent with the use of both terms in 15 CFR part 700. This section includes the definitions of “facilities,” “materials,” and “services” to provide clarity and consistency with the DPA. It also provides a definition for “determination department” and “resources department” to provide clarity and consistency with sections 201 and 202 of E.O. 13603 and other priorities and allocations regulations. It also makes non-substantive changes by adding a comma after “administrative subpoenas” in the definition of official action and a comma after “chemicals” in the definition of “maintenance and repair and/or operating supplies (MRO).”

Subpart D—Industrial Priorities

Section 700.10—Authority. This section revises the last sentence of paragraph (c)(1), to clarify what the provisions of 15 CFR part 700 are inapplicable to by removing “those other items which include.” This change is consistent with the use of “item” in 15 CFR part 700.

Section 700.11—Priority ratings. This section makes a non-substantive change

in paragraph (a)(1) by moving the period inside the quotation. It also capitalizes the word “schedule” in paragraph (b) as this word references Schedule I, a specific part of 15 CFR part 700, which is capitalized throughout 15 CFR part 700. It also clarifies the explanation of what “A7” signifies consistent with Schedule I. This section updates paragraph (c) by replacing reference to the “C2” program identification symbol with “A7” in order to refer to the program identification symbol later referenced as an example of a priority rating in this paragraph.

Section 700.12—Elements of a rated order. This section replaces the example that refers to a “DX-A4” priority rating, which is not currently in use, with a reference to a “DX-A2” priority rating, which is more commonly used, in paragraph (a)(1). It also revises paragraph (a)(4) by changing the word “regulations” to “regulation,” which is consistent with the use of the word when referencing 15 CFR part 700.

Section 700.13—Acceptance and rejection of rated orders. This section replaces the brackets with parentheses in paragraph (c)(5) consistent with other sections of 15 CFR part 700. It adds “(1)” in between “one” and “working day” in paragraph (d)(3), which is consistent with other parts of this section.

Section 700.14—Preferential scheduling. This section revises the “Examples” by changing “June 2” to “June 3” so that the fact pattern makes sense.

Section 700.15—Extension of priority ratings. This section revises paragraphs (a), (b), and (c) by changing “items” to “industrial resources,” which clarifies the type of resource covered by the extension of priority ratings provision. It also revises paragraph (a) by adding a pinpoint citation to section 700.17, adding clarity as to which section of 15 CFR part 700 is referenced. This section inserts language in paragraphs (a) and (b) that clarifies that all four required elements of a rated order outlined in section 700.12 must be included on each successive order placed to fulfill a rated order. It also inserts language in the “Example” that clarifies that a “DO-A3” is a priority rating on a rated order.

Section 700.16—Changes or cancellations of priority ratings and rated orders. This section makes one non-substantive change to paragraph (b) by removing the comma after “DO”.

Section 700.17—Use of rated orders. This section clarifies in paragraph (a)(4) that a “DO-A3” and “DO-H7” are a priority rating on a rated order. This section updates paragraph (b)(1) by adding the spelling of “90” and

parentheses around “90,” which is consistent with other sections of 15 CFR part 700. This section revises paragraph (d)(1)(ii) by changing the word “regulations” to “regulation,” which is consistent with the use of the word when referencing 15 CFR part 700. This section changes the value of \$75,000 listed in paragraph (f) to \$125,000. This change is made to conform with the changes to the Simplified Acquisition Threshold (SAT) value made under the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91), which raised the SAT from \$150,000 to \$250,000. As a result of the SAT increase, U.S. firms are not required to place a priority rating on an order less than \$125,000 (one-half of the revised SAT of \$250,000), as this amount is greater than \$75,000. BIS posted a notice to its website notifying the public of the change in the SAT after it was raised by statute but is making the change in the regulation itself with this update.

Section 700.18—Limitations on placing rated orders. This section changes the cross reference of section 700.41 found in paragraph (a)(2)(iii) and paragraph (a)(2)(iv)(B) to section 700.51, which is the correct cross reference. It also makes a non-substantive change by adding a comma after “expansion” in paragraph (a)(2)(iv)(A).

Subpart E—Industrial Priorities for Energy Programs

Section 700.21—Application for priority rating authority. This section updates the contact information for the Department of Energy.

Subpart F—Allocations Actions

Section 700.31—General Procedures. This section makes one non-substantive change in paragraph (f). “Allocations” is made singular to instead state “allocation,” which is consistent with the definition of “allocation order” in section 700.8.

Section 700.33—Types of allocation orders. This section makes one non-substantive change in the heading of this section and the first paragraph. “Allocations” is made singular to instead state “allocation,” which is consistent with the definition of “allocation order” in section 700.8.

Section 700.34—Elements of an allocation order. This section makes four non-substantive changes. In paragraph (a)(1), a comma is added after “DO rated orders.” In paragraph (b)(1), the word “regulations” is changed to “regulation,” which is consistent with the use of the word when referencing 15 CFR part 700. In paragraph (c), “that gives” is changed to “issued by.” In

paragraph (c)(1), the word “regulations” is changed to “regulation,” which is consistent with the use of the word when referencing 15 CFR part 700.

Subpart H—Special Priorities Assistance

Section 700.50—General Provisions. This section re-organizes paragraph (a) to include two paragraphs to clarify when special priorities assistance should be sought from the DOC or the Delegate Agency. This section changes the word “can” to “may” in the first sentence of paragraph (b), which is consistent with the use of the word “may” in other sections of 15 CFR part 700. It also changes paragraph (c) to clarify that special priorities assistance can be sought from the DOC, which is consistent with other sections of 15 CFR part 700. This section also includes a website reference to FORM BIS–999 in paragraph (c).

Section 700.51—Requests for priority rating authority. This section adds a new paragraph as paragraph (b) that clarifies what a person should do if they do not have priority rating authority under this part and would like to request priority rating authority. This change is consistent with current practice and requirements under E.O. 13603. As a result of this additional paragraph, this section changes paragraph (b) to paragraph (c) and paragraph (c) to paragraph (d). This section clarifies how to request priority rating authority for production and construction equipment from Delegate Agencies and the DOC in paragraph (c)(1), which is consistent with the delegations issued to the Delegate Agencies. This section includes the phrase “or those authorized by the DOC to priority rate the prime contract” in paragraph (d)(1) and removes reference to the “Delegate Agency” in paragraph (d)(2) to take into account that sponsorship may be obtained from sources other than just the Delegate Agencies. This section clarifies in paragraph (d)(4) that “Commerce” is referencing the “Department of Commerce.”

Section 700.52—Examples of assistance. This section emphasizes in paragraph (a) that special priorities assistance is in support of an approved program and inserts cross references on how to request a determination from the appropriate Determination Department that a request is necessary or appropriate to promote the national defense, consistent with the DPA and E.O. 13603. This section also adds paragraph (3) to paragraph (a) to list another situation in which special priorities assistance is usually provided.

Section 700.53—Criteria for assistance. This section adds “Determination Department” to the list of agencies that require timely requests, consistent with E.O. 13603.

Section 700.54—Instances where assistance will not be provided. This section adds “Determination Departments” in the list of agencies that have input on special priorities assistance requests, consistent with E.O. 13603.

Section 700.55—Homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States. This section changes the title of this section to “Requests for determination that program within the United States is necessary or appropriate to promote the national defense”. The information originally in this section is made into a new paragraph (a). This section clarifies what types of requests should be submitted to the Federal Emergency Management Agency (FEMA), consistent with E.O. 13603. This section updates the contact information for FEMA’s Office of Policy and Program Analysis in paragraph (a). This section creates paragraph (b) to provide information on requesting a determination from the Department of Defense (DOD), consistent with E.O. 13603. Paragraph (c) is created to provide information on requesting a determination from the Department of Energy (DOE), consistent with E.O. 13603.

Section 700.56—Military assistance programs with Canada. This section updates the contact information, including the name of the agency, for the Government of Canada. It clarifies in paragraph (g) that requests for assistance in obtaining items in Canada must submit a request to the Office of Strategic Industries and Economic Security. This change clarifies that while these requests may go through the Delegate Agency, it is not required.

Section 700.57—Military assistance programs with other nations and international organizations. This section revises information regarding the list of countries that are signatory to a bilateral security of supply arrangement with the DOD in paragraphs (a) and (c). The revision adds Denmark, Estonia, Israel, Japan, Latvia, Lithuania, Norway, Republic of Korea, and Singapore to the list of countries that are signatory to a bilateral security of supply arrangement with the DOD. It also provides the DOD website for up-to-date information on the security of supply arrangements, including the current list of foreign

nations that are signatories to the bilateral security of supply arrangements with the DOD. This change is needed as the list of foreign nations that are signatories to bilateral security of supply arrangements with the DOD was updated to include Denmark, Estonia, Israel, Japan, Latvia, Lithuania, Norway, Republic of Korea, and Singapore, and it is expected that this list will continually be updated. This section also updates the DOD contact information in paragraph (b) and paragraph (c). This section moves the last sentence of paragraph (2) to a new paragraph (3) so that the information provided in this sentence is not lost as it is different from the information provided in paragraph (2).

Section 700.58—Critical infrastructure assistance programs to foreign nations and international organizations. This section makes a non-substantive change in paragraph (a) by adding a comma after “for example.” It updates paragraph (b) by re-organizing the information into two paragraphs. This section clarifies in the new paragraph (b)(1) that requests for assistance should be submitted on Form BIS-999, which is consistent with other types of special priorities assistance requests. This section clarifies in the new paragraph (b)(2) what the request to FEMA is for, which is consistent with E.O. 13603. It also updates the contact information for FEMA’s Office of Policy and Program Analysis.

Subpart I—Official Actions

Section 700.61—Rating authorizations. This section clarifies in paragraph (a)(1) that a rating authorization permits a person to place a priority rating on an order for an item which, for example, can include an item not normally ratable under this regulation. This clarification is consistent with the clarifications made in section 700.51 and section 700.52.

Section 700.63—Letters of Understanding. This section changes “which” to “that” in paragraph (a) as well as revises information in the parentheses to add “e.g.,” and remove “and” which clarifies this is an example list of parties. It also adds “Determination Department” to the example list of parties.

Subpart J—Compliance

Section 700.70—General provisions. This section removes specific penalties information for violating the DPA, and instead directly references the penalties sections within the DPA.

Section 700.71—Audits and investigations. This section makes one non-substantive change to paragraph (a).

A comma after “other writings” is added.

Section 700.74—Violations, penalties, and remedies. This section removes specific penalties information for violating the DPA in paragraph (a), and instead directly references the penalties sections of the DPA. It also changes the word “Sections” in paragraph (a) to “sections” as this word references sections of the DPA, which begins with a lower case “s” throughout 15 CFR part 700. This section changes “also, for example” to “e.g.,” in paragraph (c), which is consistent with how 15 CFR part 700 refers to examples.

Subpart K—Adjustments, Exceptions, and Appeals

Section 700.80—Adjustments or exceptions. This section makes one non-substantive change to paragraph (c). The number “25” is moved behind the word “twenty-five” and put in parentheses, and the parentheses are removed around the word “twenty-five”. This change is consistent with other sections of 15 CFR part 700.

Section 700.81—Appeals. This section makes one non-substantive change to paragraph (b). In both sentences, the number “45” is placed in parentheses and the word “forty-five” is added. This change is consistent with other sections of 15 CFR part 700.

Subpart L—Miscellaneous Provisions

Section 700.93—Communications. This section makes one non-substantive change by moving “and” to after “explanatory information.”. It adds the address of the Office of Strategic Industries and Economic Security. It also adds “special” in front of “priorities assistance” in the last paragraph, consistent with this part.

Schedule I to Part 700—Approved Programs and Delegate Agencies

This section revises the first paragraph to clarify that Schedule I is a list of approved programs, which is a defined term in section 700.8. A sentence is added that also clarifies that use of the authority under 15 CFR part 700 requires written authorization by the DOC, consistent with other sections of 15 CFR part 700. It also moves footnote 2 to the end of the first paragraph and adds a cross reference to section 700.50 for additional information.

This section updates the description of the “A2” program identification symbol from “Missile” to “Missile and Space” in Schedule I, which is consistent with DOD’s program determination that the approved program that uses the “A2” program

identification symbol includes both Missile and Space programs.

This section removes the “C1” program identification symbol for food resources in Schedule I as “food resources (combat rations)” now falls under the jurisdiction of the Department of Agriculture’s (USDA) Agriculture Priorities and Allocation System (APAS) regulation (7 CFR part 789). Although items that fell under this program identification symbol were always food resources, the authority for which has always been delegated to USDA under E.O. 13603 and its predecessors, USDA did not have a published regulation to enact that delegated authority. Therefore, under an agreement between USDA and the DOC, DOD was permitted to place ratings using the “C1” symbol for combat rations using the DPAS. However, in 2015, USDA published the APAS regulation and DOD now uses that authority to place priority ratings on combat rations, and no longer uses the previous agreement to rate them under the DPAS.

This section updates the description of the “J1” program identification symbol to “Co-Production Programs” in Schedule I to reflect DOD’s update to the approved program. DOD made a program determination under E.O. 13603 to expand the approved program that uses the “J1” program identification symbol from “F-16 Co-Production Program” to “Co-Production Programs.” This change expands DOD’s use of this program identification symbol to other programs outside of the F-16 program.

This section also makes a non-substantive change to the description of the “H1” program identification symbol to change “section” to the symbol.

This section updates the description of the “N8” program identification symbol in Schedule I from “Miscellaneous” to “Continuity of Government” to clarify DHS’s program determination is for Continuity of Government-related programs.

This section also adds an “Other Programs” section to Schedule I, which includes the program identification symbols for national defense programs administered by other departments but that might, in some instances, need industrial resources that are under the jurisdiction of the DPAS. BIS makes these revisions to Schedule I to help provide transparency and ease between other departments’ priorities authority and the DOC’s priorities authority when a Delegate Agency needs industrial resources to implement any approved program related to other resources (*i.e.*, food resources, energy resources, health resources, civil transportation, or water resources) subject to other departments’

priorities authority and authorized for priorities support by the appropriate department.

Four U.S. government agencies are administering priorities and allocations regulations similar to the DPAS for resources under their jurisdictions as outlined in E.O. 13603. Those departments and the resources under their jurisdiction are: USDA, food resources; DOE, energy resources; the Department of Health and Human Services (HHS), health resources; and the Department of Transportation (DOT), civil transportation. Persons placing priority ratings on contracts and orders pursuant to those systems may need industrial resources that are subject to DPAS in support of those contracts or orders. For example, spare tires or engine parts (industrial resources under DPAS jurisdiction) might be needed to support a contract to provide civil transportation resources.

In administering the DPAS, BIS has noted that the Departments of Defense, Energy, Homeland Security, and Health and Human Services and the General Services Administration are the U.S. Government agencies that most frequently procure industrial resources needed to implement approved national defense programs. Accordingly, BIS has delegated to those five agencies certain DPAS authority to place priority ratings on contracts and orders for industrial resources in support of approved national defense programs (Delegate Agencies). BIS expects that those five agencies are also likely to be the agencies that most frequently procure any industrial resources that may be needed to implement any future approved programs related to food resources, energy resources, health resources, civil transportation, and water resources.

Considering these facts and to assist in developing “a consistent and unified Federal priorities and allocations system” as called for by Section 101(d)(2) of the DPA, BIS, as part of those delegations, has authorized these Delegate Agencies to place priority ratings on contracts and orders for industrial resources needed to implement any program related to food resources, energy resources, health resources, civil transportation, or water resources determined as necessary or appropriate to promote the national defense and authorized for priorities support by the appropriate resource agency (*i.e.*, Departments of Agriculture, Energy, Health and Human Services, and Transportation). Therefore, Delegate Agencies are authorized to use the same program identification symbol on such

contracts and orders for industrial resources as authorized by the appropriate resource agency to support the approved program. However, any priority rated contract or order for industrial resources placed to implement an approved program related to food resources, energy resources, health resources, civil transportation, or water resources remains subject to the DPAS. The addition of the second paragraph before the Schedule I and the “Other Programs” section within Schedule I reflects this delegated authority.

BIS invited written comments on the February 7, 2024 (89 FR 8363), proposed rule, stating that any such comments must be received by March 8, 2024. BIS received no comments, and thus adopts the rule as originally proposed with two minor technical amendments made to the proposed rule. They have been made to accurately reflect updated information sourced from other Federal agencies. The first technical amendment is to section 700.57, reflected earlier in the Preamble. Specifically, paragraphs (a) and (c) of section 700.57 are amended to accurately reflect the most current list of countries that are signatory to a bilateral security of supply arrangement with the DOD. DOD updated this list of countries on its website (<https://www.businessdefense.gov/security-of-supply.html>) after the proposed rule was published. The revision adds Denmark, Estonia, Israel, Japan, Latvia, Lithuania, Norway, Republic of Korea, and Singapore to the list of countries that are signatory to a bilateral security of supply arrangement with the DOD. The second minor technical amendment, also reflected earlier in the Preamble, is to information provided under the “Health Resources/Health Resources Priorities and Allocations System (HRPAS)” subsection of the “Other Programs” section of Schedule I, which refers to information in HHS’s HRPAS regulation (45 CFR part 101). BIS amends this section of Schedule I for consistency with updates to the HRPAS regulation reflected in the HRPAS final rule published on February 9, 2024 (89 FR 9020). The revisions to this section of Schedule I remove the M5 through M9 program identification symbols; revise the descriptions of the M1 through M4 program identification symbols; and update the **Federal Register** citation to the HRPAS from the HRPAS proposed rule to the HRPAS final rule published on February 9, 2024.

Defense Production Act of 1950, as Amended

On September 8, 1950, the President signed the Defense Production Act of 1950 (DPA), as amended into law. Title VII of the DPA includes a sunset clause for the majority of the DPA authorities which require periodic reauthorization. On August 13, 2018, the President signed the John S. McCain National Defense Authorization Act for Fiscal Year 2019 into law, which reauthorized the DPA, 50 U.S.C. 4501 *et seq.*, through September 30, 2025. The DPA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this final rule.

Expected Impact of the Rule

BIS believes this final rule merely provides clarifications and transparency to Federal, State, local, Tribal, and territorial government agencies, foreign governments, and the public to ensure ease of understanding and implementation of established procedures and will not have a significant economic impact on government agencies or the public. No comments were received and BIS is finalizing this section with no changes.

These changes improve the ease, clarity, and transparency of the existing standards and procedures used to authorize and require priority performance of certain contracts or orders that promote the national defense over other contracts and orders. The changes to ensure consistency with the Defense Production Act of 1950 (DPA) and E.O. 13603; provide clarity on procedures for the placement, acceptance, and performance of the Defense Priorities and Allocations System (DPAS) priority rated orders; and provide transparency to the process for parties to request SPA.

The standards and process under which a rated order is authorized, placed, or performed on are not changed with this final rule. There are no modifications to the procedures for the placement, acceptance, and performance of rated orders or for the allocation of materials, services, and facilities. Firms are not required to reduce the total volume of orders or require the recipient of a rated order to reduce prices or provide rated orders with more favorable terms than comparable unrated orders. Nor do the changes amend the requirements or procedures for requesting Special Priorities Assistance (SPA).

Rulemaking Requirements

1. This final rule is not a significant regulatory action for purposes of Executive Order (E.O.) 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. With the proposed rule published in February 2024, BIS also requested comments on changes to an existing information collection, *Request for Special Priorities Assistance* (OMB Control Number 0694-0057). No public comments were received and BIS has submitted for OMB approval a revised information collection which reflect the changes discussed in the proposed rule.

3. These changes do not contain policies with federalism implications as that term is defined in E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Regulation, Small Business Administration that this final rule will not have a significant impact on a substantial number of small entities for the reasons explained below. No other law requires such an analysis and no comments were received on the certification. Consequently, no regulatory flexibility analysis is required, and none has been prepared.

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.

Accordingly, 15 CFR part 700 of the DPAS regulation, is amended as follows:

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

■ 1. The authority citation for 15 CFR part 700 continues to read as follows:

Authority: 50 U.S.C. 4501 *et seq.*; 42 U.S.C. 5195, *et seq.*; 50 U.S.C. 3816; 10 U.S.C. 2538; 50 U.S.C. 82; E.O. 12656, 53 FR 226, 3 CFR, 1988 Comp., p. 585; E.O. 12742, 56 FR 1079, 3 CFR, 1991 Comp., p. 309; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225.

■ 2. Section 700.1 is amended by revising the second and third sentences to read as follows:

§ 700.1 Purpose of this part.

* * * The DPAS implements the priorities and allocations authority of the Defense Production Act (50 U.S.C. 4501 *et seq.*), delegated to the Department of Commerce under Executive Order 13603, including use of that authority to support emergency preparedness activities pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), and the priorities authority of the Selective Service Act and related statutes, all with respect to industrial resources. The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders (other than contracts of employment) and for the allocation of materials, services, and facilities for approved programs. * * *

■ 3. Revise section 700.2 to read as follows:

§ 700.2 Introduction.

(a) Certain national defense and energy programs (including military, emergency preparedness, homeland security, and critical infrastructure protection and restoration activities) may be eligible for priorities and allocations support as determined by a Determination Department.

(b) The Department of Commerce administers the DPAS and may exercise priorities and allocations authority to ensure the timely delivery of industrial resources to meet approved program requirements.

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

is also listed as an agency for programs where its authorization is necessary to place rated orders.

■ 4. Section 700.3 is amended by revising paragraphs (a) and (d) to read as follows:

§ 700.3 Priority ratings and rated orders.

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

* * * * *

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the industrial resources 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.

* * * * *

■ 5. Section 700.8 is amended by:

- a. Revising the definitions of “Approved program” and “Defense Production Act”;
- b. Adding in alphabetical order the definitions of “Determination Department” and “Facilities”;
- c. Revising the definition of “Industrial resources”;
- d. Removing the definition of “Item”;
- e. Adding in alphabetical order a definition for “Materials”;
- f. Revising the definitions of “National defense”, “Official action”, “Priorities authority”, and “Priority rating”;
- g. Adding in alphabetical order a definition for “Resource Department”;
- h. Revising the definition of “Selective Service Act”;
- i. Adding in alphabetical order a definition for “Services”; and
- j. Revising the definition of “Stafford Act”;

The revisions and additions read as follows:

§ 700.8 Definitions.

* * * * *

Approved program. A program determined in writing 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, or the Selective Service Act and Executive Order 12742.

* * * * *

Defense Production Act. The Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*).

* * * * *

Determination Department. Any of the three Federal departments whose head is delegated authority by the President under section 202 of Executive Order 13603 to determine in writing that a program is necessary or appropriate to promote the national defense (referred to as “approved program”):

(1) The Secretary of Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities;

(2) The Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(3) The Secretary of Homeland Security with respect to all other national defense programs, including civil defense and continuity of Government.

* * * * *

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

* * * * *

Industrial resources. All materials, services, and facilities, including construction materials, the authority for which has not been delegated to other agencies under Executive Order 13603. This term may also be referred to as “item” in this part.

* * * * *

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. 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. 5121 *et seq.*) and critical infrastructure protection and restoration.

Official action. An action taken by the Department of Commerce under the authority of the Defense Production Act, the Selective Service Act and related statutes, and this part. Such actions include the issuance of rating authorizations, directives, letters of understanding, demands for information, inspection authorizations, administrative subpoenas, and allocation orders.

* * * * *

Priorities authority. The authority of the Department of Commerce, pursuant to section 101 of the Defense Production Act, to require priority performance of contracts and orders (other than contracts of employment) for industrial resources for use in approved programs.

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

* * * * *

Resource Department. Any of the six Federal departments whose head is delegated authority by the President under section 201 of Executive Order 13603 to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense (referred to as “approved program”):

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce with respect to all other materials, services, and facilities, including construction materials (referred to as “industrial resources”).

* * * * *

Selective Service Act. Section 18 of the Selective Service Act of 1948 (50 U.S.C. 3816).

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; or

(3) Other national defense programs and activities.

* * * * *

Stafford Act. Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

* * * * *

■ 6. Section 700.10 is amended by revising the last sentence in paragraph (c)(1) introductory text to read as follows:

§ 700.10 Authority.

* * * * *

(c) * * *
(1) * * * Unless otherwise agreed to by the concerned agencies, the provisions of this part are not applicable to:

* * * * *

■ 7. Section 700.11 is amended by revising paragraph (a)(1), the second and third sentences of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 700.11 Priority ratings.

(a) * * *

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

* * * * *

(b) * * * The list of approved programs and their identification symbols is found in schedule I to this part. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic and communications equipment programs. * * *

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, A7, or N1. * * *

■ 8. Section 700.12 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

§ 700.12 Elements of a rated order.

(a) * * *

(1) The appropriate priority rating and program identification symbol (e.g., DO–A1, DX–A2, DO–N1).

* * * * *

(4) A statement that reads in substance: “This is a rated order certified for national defense use and

you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).”

* * * * *

■ 9. Section 700.13 is amended by revising paragraphs (c)(5) and (d)(3) to read as follows:

§ 700.13 Acceptance and rejection of rated orders.

* * * * *

(c) * * *

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act or the Selective Service Act and related statutes (see § 700.75).

(d) * * *

(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 (hard copy) or electronic confirmation must be provided within one (1) working day of the verbal notice.

■ 10. Section 700.14 is amended by revising the second sentence in “Examples” to paragraph (b) to read as follows:

§ 700.14 Preferential Scheduling.

* * * * *

(b) * * *

Examples:

* * * If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 3 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. * * *

* * * * *

■ 11. Revise Section 700.15 to read as follows:

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain industrial resources needed to fill a rated order. All elements of a rated order outlined in section 700.12 must be included on the rated order. The person must use the priority rating indicated on the customer’s rated order, except as otherwise provided in this part (see § 700.17) or as directed by the Department of Commerce.

Example:

If a person is in receipt of a rated order with a priority rating of DO–A3

for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO–A3 priority rating to obtain the needed semiconductors.

(b) The required elements of a rated order outlined in § 700.12 must be included on each successive order placed to obtain industrial resources 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 industrial resources 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.

■ 12. Section 700.16 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(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.

* * * * *

■ 13. Section 700.17 is amended by revising paragraphs (a)(4), (b)(1), (d)(1)(ii), and (f) to read as follows:

§ 700.17 Use of rated orders.

(a) * * *

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer’s rated order. For example, a person in receipt of a rated order with a priority rating of DO–A3 rated order, who needs MRO, would place a rated order with a priority rating of DO–H7 rated order with the person’s supplier.

(b) * * *

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

* * * * *

(d) * * *

(1) * * *

(ii) The elements of a rated order, as required by § 700.12, are included on the order with the statement required in § 700.12(a)(4) modified to read in substance: “This purchase order contains rated order quantities certified

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

* * * * *

(f) A person is not required to place a priority rating on an order for less than \$125,000, or one half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR)) (see FAR section 2.101), whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

■ 14. Section 700.18 is amended by revising paragraphs (a)(2)(iii), (a)(2)(iv)(A), and (a)(2)(iv)(B) to read as follows:

§ 700.18 Limitations on placing rated orders.

(a) * * *

(2) * * *

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

(iv) * * *

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

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

* * * * *

■ 15. Section 700.21 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 700.21 Application for priority rating authority.

(a) * * * Further information may be obtained from the Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586–8100; Email: *askcrr@hq.doe.gov*.

* * * * *

■ 16. Section 700.31 is amended by revising paragraph (f) to read as follows:

§ 700.31 General procedures.

* * * * *

(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, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation action (e.g., anticipated start and end dates);

* * * * *

■ 17. Section 700.33 is amended by revising the section heading and introductory text to read as follows:

§ 700.33 Types of allocation orders.

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

* * * * *

■ 18. Section 700.34 is amended by revising paragraphs (a)(1), (b)(1), (c) introductory text, and (c)(1) to read as follows:

§ 700.34 Elements of an allocation order.

* * * * *

(a) * * *

(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.

* * * * *

(b) * * *

(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 Defense Priorities and Allocations System regulation (15 CFR part 700).”

* * * * *

(c) *Elements to be included in an allocation order issued by 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 Defense Priorities and Allocations System regulation (15 CFR part 700).”

* * * * *

■ 19. Revise section 700.50 to read as follows:

§ 700.50 General provisions.

(a) Once a priority rating has been authorized pursuant to this part, further action by the Department of Commerce generally is not needed. However, it is anticipated that from time-to-time problems will occur. In this event, a person should immediately contact the appropriate contract administration

officer or the Department of Commerce for guidance or assistance. Special priorities assistance is a service provided to alleviate problems that do arise.

(1) If additional formal aid is needed for a rated order placed by a Delegate Agency, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action.

(2) If additional formal aid is needed for a rated order placed by other authorized persons, special priorities assistance should be sought from the Department of Commerce.

(b) Special priorities assistance may 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. If the Department of Commerce is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Commerce may forward the request to another agency, identified in § 700.10(c), as appropriate, for action.

(c) A request for special priorities assistance must be submitted on Form BIS–999 (OMB control number 0694–0057) to the local contract administration representative or to the Department of Commerce. Form BIS–999 may be obtained from the Delegate Agency representative or from the Department of Commerce. A sample Form BIS–999 is attached at appendix I. A fillable Form BIS–999 may be obtained on the following website: <https://www.bis.doc.gov/>.

■ 20. Revise 700.51 to read as follows:

§ 700.51 Requests for priority rating authority.

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

- (1) Production or construction equipment;
- (2) Computers when not used as production items; and
- (3) Expansion, rebuilding or replacing plant facilities.

(b) If a person does not have priority rating authority under this part from a Delegate Agency or the Department of Commerce and is unable to ensure the timely delivery of industrial resources, the person may request the authority to use a priority rating in ordering the needed items.

(1) A request for priority rating authority under this part must be submitted on Form BIS–999 to the Department of Commerce (see § 700.50(c) for information on Form BIS–999).

(2) A request for priority rating authority under this part may be used only to support approved programs (see § 700.55, § 700.57, and § 700.58 for information on requesting a determination by the appropriate Determination Department that the request supports a program that is necessary or appropriate to promote the national defense).

(c) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must be submitted to the appropriate Delegate Agency or the Department of Commerce. Requests in support of Department of Defense approved programs should be submitted to the Department of Defense on Department of Defense Form DD 691. All other requests should be submitted on Form BIS–999. If the Delegate Agency is unable to resolve the problem or authorize the use of a priority rating, the Delegate Agency may forward the request to the Department of Commerce for action.

(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.

(d) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, the Department of Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency or those authorized by the Department of Commerce to priority rate the prime contract. 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 and our use of that priority rating with our suppliers in no way commits the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request."

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

- (i) The probability that the prime contract will be awarded;
- (ii) The impact of the resulting rated orders on suppliers and on other authorized programs;
- (iii) Whether the contractor is the sole source;
- (iv) Whether the item being produced has a long lead time; and
- (v) The time period for which the rating is being requested.

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

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

■ 21. Section 700.52 is amended by revising paragraph (a) to read as follows:

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation and an approved program (see § 700.55, § 700.57, § 700.58, and Schedule I 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;
- (2) A person cannot locate a supplier for an item needed to fill a rated order; or
- (3) A person is experiencing difficulty in obtaining delivery for an unrated order by the required delivery date.

* * * * *

■ 22. Amend section 700.53 by revising the introductory text to read as follows:

§ 700.53 Criteria for assistance.

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

* * * * *

■ 23. Amend section 700.54 by revising the first sentence of the introductory text to read as follows:

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Determination Departments, Delegate Agencies, and the Department of Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. * * *

* * * * *

■ 24. Revise section 700.55 to read as follows:

§ 700.55 Requests for determination that program within the United States is necessary or appropriate to promote the national defense.

(a) *Homeland security, emergency response, and critical infrastructure protection and restoration assistance programs within the United States.* Any person requesting priority rating authority or requiring assistance in obtaining rated items under this part supporting homeland security, emergency preparedness, and critical infrastructure protection and restoration related activities should submit a request for a determination in writing that is necessary or appropriate to promote the national defense (referred to as "approved program") to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street SW, Washington, DC 20472; Telephone: (202) 212-2900; Fax: (202) 646-4601; Email: FEMA-DPA@fema.dhs.gov, website: <https://www.fema.gov/disaster/defense-production-act>.

(b) *Military production and construction, military use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities within the United States.* Any person requesting priority rating authority or requiring assistance under this part in obtaining rated items supporting military production and construction, military

use of civil transportation, stockpiles managed by the Department of Defense, space, and directly related activities should submit a request for a determination in writing that the request supports a program that is necessary or appropriate to promote the national defense (referred to as "approved program") to the Department of Defense DPA Title I Lead in the Office of the Assistant Secretary of Defense for Industrial Base Policy, 3330 Defense Pentagon, Room 3B854, Washington, DC 20301; Telephone: (703) 697-0051; Fax: (703) 695-4885; Email: osd.pentagon.ousd-a-s.mbx.indpol-dpa-title-i@mail.mil; website: <https://www.businessdefense.gov/>.

(c) *Energy production and construction, distribution and use, and directly related activities within the United States.* Any person requesting priority rating authority or requiring assistance under this part in obtaining rated items supporting energy production and construction, distribution and use, and directly related activities should submit a request for a determination in writing that the request supports a program that is necessary or appropriate to promote the national defense (referred to as "approved program") to the Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586-8100; Email: askcr@hq.doe.gov.

■ 25. Section 700.56 is amended by revising paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 700.56 Military assistance programs with Canada.

* * * * *

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

(d) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the Canadian supplier or the Canadian supplier's vendor to fill the order, the Canadian supplier or vendor should contact Public Works and Government Services Canada for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business

Management Directorate, Phase 3, Place du Portage, 0B2-103, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; Telephone: (819) 420-7200; Fax: (819) 997-9776, or electronically at *TPSGC.PAPrioritesdedefense-APDefencePriorities.PWGSC@tpsgc-pwgsc.gc.ca*.

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

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

(g) Any person in the United States requiring assistance in obtaining items in Canada must submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce on Form BIS-999. The Department of Commerce will forward appropriate requests to Public Works and Government Services Canada.

■ 26. Section 700.57 is amended by revising paragraphs (a), (b)(1), and (c) to read as follows:

§ 700.57 Military assistance programs with other nations and international organizations.

(a) *Scope.* To promote military assistance to foreign nations and international organizations (for example, the North Atlantic Treaty Organization or the United Nations), this section provides for authorizing priority ratings to persons in foreign nations or international organizations to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in foreign nations that are signatories to bilateral security of supply arrangements with the Department of Defense. These foreign nations include Australia, Estonia, Denmark, Finland, Israel, Italy, Japan, Latvia, Lithuania, The Netherlands, Norway, Republic of Korea, Singapore, Spain, Sweden, and the United Kingdom. The most current security of supply arrangement

information, including an up-to-date list of countries, may be found on the following website: <https://www.businessdefense.gov/security-of-supply.html>.

(b) * * *

(1) Any person in a foreign nation other than Canada, or any person in an international organization, requiring assistance in obtaining items in the United States or priority rating authority for items to be purchased in the United States, should submit a request for such assistance or priority rating authority to the Department of Defense DPA Title I Lead in the Office of the Assistant Secretary of Defense for Industrial Base Policy, 3330 Defense Pentagon, Room 3B854, Washington, DC 20301; Telephone: (703) 697-0051; Fax: (703) 695-4885; Email: osd.pentagon.ousd-a-s.mbx.indpol-dpa-title-i@mail.mil, website: <https://www.businessdefense.gov/>.

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

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

* * * * *

(c) *Requesting assistance in foreign nations that are signatories to bilateral security of supply arrangements.* (1) The Department of Defense has entered into bilateral security of supply arrangements with several foreign nations that allow the Department of Defense to request the priority delivery for Department of Defense contracts, subcontracts, and orders from companies in these countries. These countries include Australia, Denmark, Estonia, Finland, Israel, Italy, Japan, Latvia, Lithuania, The Netherlands, Norway, Republic of Korea, Singapore, Spain, Sweden, and the United Kingdom. The most current security of supply arrangement information, including an up-to-date list of countries, may be found on the following website: <https://www.businessdefense.gov/security-of-supply.html>.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in foreign nations that are signatories to bilateral security of supply arrangements with the

Department of Defense should contact the Department of Defense DPA Title I Lead in the Office of the Assistant Secretary of Defense for Industrial Base Policy for assistance.

(3) Persons in foreign nations that are signatories to bilateral security of supply arrangements with the Department of Defense should request assistance in accordance with paragraph (b)(1) of this section.

■ 27. Revise section 700.58 to read as follows:

§ 700.58 Critical infrastructure assistance programs to foreign nations and international organizations.

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

(b) *Foreign nations or international organizations.* (1) Any person in a foreign nation or representing an international organization requiring assistance in obtaining items under this part to be purchased in the United States for support of critical infrastructure protection and restoration should submit a request for priority rating authority on Form BIS-999 to the Department of Commerce (see § 700.50(c) for information on Form BIS-999).

(2) Any person in a foreign nation or representing an international organization requesting priority rating authority or requiring assistance in obtaining rated items under this part in support of critical infrastructure protection and restoration related activities should submit a request for a determination in writing that the request supports a program that is necessary or appropriate to promote the national defense to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street SW, Washington, DC 20472; Telephone: (202) 212-2900; Fax: (202) 646-4601; Email: FEMA-DPA@fema.dhs.gov, website: <https://www.fema.gov/disaster/defense-production-act>.

■ 28. Section 700.61 is amended by revising paragraph (a)(1) to read as follows:

§ 700.61 Rating authorization.

(a) * * *

(1) Permits a person to place a priority rating on an order for an item, such as

an item not normally ratable under this regulation; or

* * * * *

■ 29. Section 700.63 is amended by revising paragraph (a) to read as follows:

§ 700.63 Letters of understanding.

(a) A letter of understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (e.g., the Department of Commerce, the Determination Department, the Delegate Agency, the supplier, the customer).

* * * * *

■ 30. Section 700.70 is amended by revising paragraph (b) to read as follows:

§ 700.70 General provisions.

* * * * *

(b) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this part, or an official action of the Department of Commerce, is a criminal act, punishable as provided in sections 103 and 705 of the Defense Production Act.

■ 31. Section 700.71 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 700.71 Audits and investigations.

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

* * * * *

■ 32. Section 700.74 is amended by revising paragraph (a) and paragraph (c) introductory text to read 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 or this part is a crime and upon conviction, a person may be punished by fine or imprisonment, or both as provided in

sections 103 and 705 of the Defense Production Act and in section 468(f) of the Selective Service Act.

* * * * *

(c) In order to secure the effective enforcement of the Defense Production Act, this part, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see e.g., sections 2 and 371 of Title 18 United States Code):

* * * * *

■ 33. Section 700.80 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 700.80 Adjustments or exceptions.

* * * * *

(c) * * * The Office of Strategic Industries and Economic Security shall respond to requests for adjustment of or exceptions to compliance with the provisions of this part or an official action within twenty-five (25) days, not including Saturdays, Sundays or Government holidays, of the date of receipt.

* * * * *

■ 34. Section 700.81 is amended by revising paragraph (b) to read as follows:

§ 700.81 Appeals.

* * * * *

(b) 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 the Assistant Secretary for Export Administration no later than forty-five (45) days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this forty-five (45) day period, an appeal may be accepted at the discretion of the Assistant Secretary for Export Administration.

* * * * *

■ 35. Revise section 700.93 to read as follows:

§ 700.93 Communications.

General communications concerning this part, including how to obtain copies of this part, explanatory information, and requests for guidance or clarification, may be addressed to the Office of Strategic Industries and

Economic Security, Room 3876, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, Ref: DPAS; Telephone (202) 482-3634, email *DPAS@bis.doc.gov*. Request for special priorities assistance under § 700.50, adjustments or exceptions under § 700.80, or appeals under § 700.81, must be submitted in the manner specified in those sections.

■ 36. Revise Schedule I to Part 700 to read as follows:

Schedule I to Part 700—Approved Programs and Delegate Agencies

Schedule I provides a list of approved programs. They have equal preferential status. Use of this part in support of an approved program requires written authorization by the Department of Commerce. The Department of Commerce has authorized the delegate agencies listed in the third column to use this part in support of those programs assigned to them, as indicated below. The Department of Commerce is also listed as an agency in the third column for programs where its authorization in writing is necessary to place rated orders (see § 700.51 for information on how to request priority rating authority).

The Department of Commerce has authorized Delegate Agencies to place priority ratings on contracts and orders for industrial resources needed to implement any approved program that has been authorized for priorities support by the appropriate Resource Department. The program identification symbol used on priority rated contracts and orders authorized by the appropriate Resource Department to support the approved program must also be used on rated orders for industrial resources needed to implement the approved program. However, any rated order for industrial resources placed to implement an approved program that has been authorized for priorities support by a Resource Department remains subject to the provisions of this part. The program identification symbols for these approved programs are found under the “Other Programs” section of Schedule I.

Program identification symbol	Approved program	Agency(ies)
Defense Programs		
A1	Aircraft	Department of Defense.
A2	Missiles and Space	Department of Defense.
A3	Ships	Department of Defense.
A4	Tank—Automotive	Department of Defense.
A5	Weapons	Department of Defense.
A6	Ammunition	Department of Defense.

Program identification symbol	Approved program	Agency(ies)
A7	Electronic and communications equipment	Department of Defense.
B1	Military building supplies	Department of Defense.
B8	Production equipment (for defense contractor's account)	Department of Defense.
B9	Production equipment (Government owned)	Department of Defense.
C2	Department of Defense construction	Department of Defense.
C3	Maintenance, repair, and operating supplies (MRO) for Department of Defense facilities.	Department of Defense.
C9	Miscellaneous	Department of Defense.
Military Assistance to Canada		
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Department of Commerce.
D3	Canadian atomic energy program	Department of Commerce.
Military Assistance to Other Foreign Nations		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada	Department of Commerce.
G3	Foreign nations (other than Canada) production and construction	Department of Commerce.
Critical Infrastructure Assistance to Foreign Nations		
G4	Foreign critical infrastructure programs	Department of Commerce.
Co-Production		
J1	Co-Production Program	Departments of Commerce and Defense.
Atomic Energy Programs		
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair, and operating supplies (MRO).	Department of Energy.
E3	Privately owned facilities	Department of Energy.
Domestic Energy Programs		
F1	Exploration, production, refining, and transportation	Department of Energy.
F2	Conservation	Department of Energy.
F3	Construction, repair, and maintenance	Department of Energy.
Other Defense, Energy, and Related Programs		
H1	Certain combined orders (see § 700.17(c))	Department of Commerce.
H5	Private domestic production	Department of Commerce.
H6	Private domestic construction	Department of Commerce.
H7	Maintenance, repair, and operating supplies (MRO)	Department of Commerce.
H8	Designated Programs	Department of Commerce.
K1	Federal supply items	General Services Administration.
Homeland Security Programs		
N1	Federal emergency preparedness, mitigation, response, and recovery	Department of Homeland Security.
N2	State, local, Tribal, and territorial government emergency preparedness, mitigation, response, and recovery.	Department of Homeland Security.
N3	Intelligence and warning systems	Department of Homeland Security.
N4	Border and transportation security	Department of Homeland Security.
N5	Domestic counter-terrorism, including law enforcement	Department of Homeland Security.
N6	Chemical, biological, radiological, and nuclear countermeasures	Department of Homeland Security.
N7	Critical infrastructure protection and restoration	Department of Homeland Security.
N8	Continuity of Government	Department of Homeland Security.
Other Programs		
<i>Health Resources/Health Resources Priorities and Allocations System (HRPAS)</i>		
M1	Emergency Support Function 8 Public Health and Medical Services.	
M2	Strategic National Stockpile.	
M3	Biodefense and Related Medical Countermeasures.	
M4 [89 FR 9020; February 9, 2024].	ASPR Critical Infrastructure Protection Program.	

Program identification symbol	Approved program	Agency(ies)
<i>Food Resources/Agriculture Priorities and Allocations System (APAS)</i>		
P1	Food and food resources (civilian).	
P2	Agriculture and food critical infrastructure protection and restoration.	
P3	Food resources (combat rations).	
P4 [80 FR 63890; Dec. 21, 2015].	Certain combined orders.	
<i>Transportation Resources/Transportation Priorities and Allocations System (TPAS)</i>		
T1	Federal emergency preparedness, mitigation, response, and recovery.	

Eric Longnecker,
Deputy Assistant Secretary for Technology Security.
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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 24-12]

RIN 1515-AE66

Imposition of Import Restrictions on Archaeological and Ethnological Material of Tunisia

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.
ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological and ethnological material from the Republic of Tunisia (Tunisia). These restrictions are imposed pursuant to an agreement between the United States and Tunisia, entered into under the authority of the Convention on Cultural Property Implementation Act. This document amends the CBP regulations by adding Tunisia to the list of countries which have bilateral agreements with the United States imposing cultural property import restrictions and contains the Designated List, describing the archaeological and ethnological materials to which the restrictions apply.

DATES: Effective on July 22, 2024.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beavers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch,

Regulations and Rulings, Office of Trade, (202) 325-0084, *ot-trrculturalproperty@cbp.dhs.gov*. For operational aspects, Julie L. Stoerber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945-7064, *1USGBranch@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on certain archaeological and ethnological material. Pursuant to the CPIA, the United States entered into a bilateral agreement with the Republic of Tunisia (Tunisia) to impose import restrictions on certain archaeological and ethnological material of Tunisia. This rule announces that the United States is now imposing import restrictions on certain archaeological and ethnological material of Tunisia through February 6, 2029. This period may be extended for additional periods, each extension not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a))).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On September 23, 2020, the Assistant Secretary for Educational and Cultural Affairs, United States Department of

State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Tunisia that is described in the Designated List set forth below in this document.

These determinations include the following: (1) that the cultural patrimony of Tunisia is in jeopardy from the pillage of archaeological material representing Tunisia’s cultural heritage dating from approximately 200,000 B.C. to A.D. 1750, and ethnological material representing Tunisia’s cultural heritage from the Ottoman and early Husseinite periods, ranging in date from approximately A.D. 1574 to 1881 (19 U.S.C. 2602(a)(1)(A)); (2) that the Tunisian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

The Agreement

On March 16, 2023, the Governments of the United States and Tunisia signed a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Tunisia Concerning the Imposition of Import Restrictions on Archaeological and Ethnological Material of Tunisia” (the