

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 25, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the ATR—GIE Avions de Transport Régional airplanes specified in paragraphs (c)(1) and (2) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0181, dated October 13, 2023 (EASA AD 2023–0181).

(1) Model ATR42–200, –300, –320, and –500 airplanes.

(2) Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by a report of an electrical contactor that failed with contacts in the intermediate position, causing the airplane to lose power to multiple electrical systems. The FAA is issuing this AD to address an electrical failure. The unsafe condition, if not addressed, could result in temporary loss of the direct current emergency electrical network and loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0181.

(h) Exceptions to EASA AD 2023–0181

(1) Where EASA AD 2023–0181 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2023–0181.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions

from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

(1) For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3220; email: shahram.daneshmandi@faa.gov.

(2) For ATR service information identified in this AD that is not incorporated by reference, contact ATR—GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email continued.airworthiness@atr-aircraft.com; website atr-aircraft.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0181, dated October 13, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0181, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on February 1, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–02442 Filed 2–6–24; 8:45 am]

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

[Docket No. 240108–0002]

RIN 0694–AJ15

Clarifications and Updates to Defense Priorities and Allocations System Regulation

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Bureau of Industry and Security’s (BIS) Defense Priorities and Allocations System (DPAS) regulation by providing administrative changes to well-established standards and procedures. This proposed rule would: clarify existing standards and procedures by which BIS may provide Special Priorities Assistance (SPA); revise Schedule I to provide transparency and differentiation between other departments’ priorities jurisdiction and the Department of Commerce’s jurisdiction; and provide technical edits to reflect certain non-substantive updates since the DPAS regulation was last amended in 2014, including providing updated contact information, legal citations, and definitions.

DATES: Comments on this proposed rule must be received by BIS by no later than March 8, 2024.

ADDRESSES: Comments on this proposed rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The regulations.gov ID for this rule is: BIS–2024–0002. Please refer to RIN 0694–AJ15 in all comments. Anyone submitting business confidential information should clearly identify any business confidential portion of a comment at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin

with the character “P.” Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:
Katie Reid at (202) 482–3634, DPAS@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would 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), Bureau of Industry and Security (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 Proposed Rule Would Make to the Existing DPAS Regulation

The following discussion explains the changes that this proposed rule would make to the existing DPAS regulation.

Subpart A—Purpose

Section 700.1—Purpose of this part. This section would add the legal citation for the DPA and update the legal citation for the Robert T. Stafford Disaster Relief Emergency Assistance Act. This rule would also make 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 would change reference to “industrial items” to “industrial resources” in paragraph (b) in order to use the term “industrial resources” defined in § 700.8. Paragraph (c) would be revised to highlight that the DOC is also listed as an agency in Schedule I and the reason why. BIS believes that the additional information would provide a more complete description of Schedule I.

Section 700.3—Priority ratings and rated orders. This section would add 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 would make 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 would update the legal citation for the DPA found in the definition of “Defense Production Act.” It would update the legal citation for the Stafford Act found in the definitions of “national defense” and “Stafford Act,” and it would update the legal citation for the Selective Service Act found in the definition of “Selective Service Act.” Both the definition of “approved program” and “priorities authority” are proposed for updates in order to be consistent with the language of the DPA and E.O. 13603. It would also update the definition of “priority rating” to provide clarity that the DOC may assign the priority rating, which is consistent with 15 CFR part 700. It would remove the definition of “item” and update the definition of “industrial resources” to clarify and be consistent with the use of both terms in 15 CFR part 700. This section would include the definitions of “facilities,” “materials,” and “services” to provide clarity and be consistent with the DPA. It would also provide a definition for “determination department” and “resources department” to provide clarity and be consistent with sections 201 and 202 of E.O. 13603 and other priorities and allocations regulations. It would also make 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 would revise the last sentence of paragraph (c)(1), to provide clarity on what the provisions of 15 CFR part 700 are not applicable to by removing “those other items which include”. This change is to be consistent with the use of “item” in 15 CFR part 700.

Section 700.11—Priority ratings. This section would make a non-substantive change in paragraph (a)(1) by moving the period inside the quotation. It would also capitalize 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 would also clarify the explanation of what “A7” signifies to be consistent with Schedule I. This section would update 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 would replace 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 would also revise paragraph (a)(4) by changing the word “regulations” to “regulation” to be consistent with the use of the word when referencing 15 CFR part 700.

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

Section 700.14—Preferential scheduling. This section would revise 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 would revise paragraphs (a), (b), and (c) by changing “items” to “industrial resources” to clarify the type of resource covered by the extension of priority ratings provision. It would also revise paragraph (a) by adding a pinpoint citation to section 700.17 to add clarity as to which section of 15 CFR part 700 is being referenced. This section would insert language in paragraphs (a) and (b) to clarify 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 would also insert language in the “Example” to clarify 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 would make one non-substantive change to paragraph (b) by removing the comma after “DO”.

Section 700.17—Use of rated orders. This section would clarify in paragraph (a)(4) that a “DO–A3” and “DO–H7” are a priority rating on a rated order. This section would update paragraph (b)(1) by adding the spelling of “90” and parentheses around “90” to be consistent with other sections of 15 CFR part 700. This section would revise paragraph (d)(1)(ii) by changing the word “regulations” to “regulation” to be consistent with the use of the word when referencing 15 CFR part 700. This section would change the value of \$75,000 listed in paragraph (f) to \$125,000. This change would be made to conform with the changes to the Simplified Acquisition Threshold (SAT) value made under the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 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 would change 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 would also make 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 would update the contact information for the Department of Energy.

Subpart F—Allocations Actions

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

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

Section 700.34—Elements of an allocation order. This section would make four non-substantive changes. In paragraph (a)(1), a comma would be added after “DO rated orders.” In paragraph (b)(1), the word “regulations” would be changed to “regulation” to be consistent with the use of the word when referencing 15 CFR part 700. In paragraph (c), “that gives” would be changed to “issued by.” In paragraph (c)(1), the word “regulations” would be changed to “regulation” to be 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 would re-organize paragraph (a) to include two paragraphs in order to provide clarity as to when special priorities assistance should be sought from the DOC or the Delegate Agency. This section would change the word “can” to “may” in the first sentence of paragraph (b) to be consistent with the use of the word “may” in other sections of 15 CFR part 700. It would also change paragraph (c) to clarify special priorities assistance can be sought from the DOC to be consistent with other sections of 15 CFR part 700. This section would capitalize “appendix” in paragraph (c) as this word references Appendix I, a specific part of 15 CFR part 700. This section would also include a website reference to FORM BIS–999 in paragraph (c).

Section 700.51—Requests for priority rating authority. This section would add a new paragraph as paragraph (b) to clarify what a person should do if they do not have priority rating authority under this part and would like to request priority rating authority to be consistent with current practice and requirements under E.O. 13603. As a result of this additional paragraph, this section would change paragraph (b) to paragraph (c) and paragraph (c) to paragraph (d). This section would clarify how to request priority rating authority for production and construction equipment from Delegate Agencies and the DOC in paragraph (c)(1) to be consistent with the delegations issued to the Delegate Agencies. This section would include the phrase “or those authorized by the DOC to priority rate the prime contract”

in paragraph (d)(1) and would remove 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 would clarify in paragraph (d)(4) that “Commerce” is referencing the “Department of Commerce.”

Section 700.52—Examples of assistance. This section would emphasize in paragraph (a) that special priorities assistance is in support of an approved program and would insert 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 would also add 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 would add “Determination Department” to the list of agencies that require timely requests to be consistent with E.O. 13603.

Section 700.54—Instances where assistance will not be provided. This section would add “Determination Departments” in the list of agencies that have input on special priorities assistance requests to be 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 would change 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 would be made into a new paragraph (a). This section would clarify what types of requests should be submitted to the Federal Emergency Management Agency (FEMA) to be consistent with E.O. 13603. This section would update the contact information for FEMA’s Office of Policy and Program Analysis in paragraph (a). This section would create paragraph (b) to provide information on requesting a determination from the Department of Defense (DOD) to be consistent with E.O. 13603. Paragraph (c) would be created to provide information on requesting a determination from the Department of Energy (DOE).

Section 700.56—Military assistance programs with Canada. This section would update the contact information, including the name of the agency, for the Government of Canada. It would clarify 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 would provide clarity 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 would revise 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 would add Denmark, Israel, Japan, Latvia, and Norway to the list of countries that are signatory to a bilateral security of supply arrangement with the DOD. It would also provide 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 has updated to include Denmark, Israel, Japan, Latvia, and Norway, and it is expected that this list will continually be updated. This section would also update the DOD contact information in paragraph (b) and paragraph (c). This section would move 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 would make a non-substantive change in paragraph (a) to add a comma after “for example.” It would update paragraph (b) by re-organizing the information into two paragraphs. This section would clarify in the new paragraph (b)(1) that requests for assistance should be submitted on Form BIS-999 to be consistent with other types of special priorities assistance requests. This section would clarify in the new paragraph (b)(2) what the request to FEMA is for to be consistent with E.O. 13603. It would also update the contact information for FEMA’s Office of Policy and Program Analysis.

Subpart I—Official Actions

Section 700.61—Rating authorizations. This section would clarify 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 would be consistent with the clarifications made in section 700.51 and section 700.52.

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

Subpart J—Compliance

Section 700.70—General provisions. This section would remove specific penalties information for violating the DPA, and instead directly reference the penalties’ sections within the DPA.

Section 700.71—Audits and investigations. This section would make one non-substantive change to paragraph (a). A comma after “other writings” would be added.

Section 700.74—Violations, penalties, and remedies. This section would remove specific penalties information for violating the DPA in paragraph (a), and instead directly reference the penalties sections of the DPA. It would also change 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 would change “also, for example” to “e.g.,” in paragraph (c) to be consistent with how 15 CFR part 700 refers to examples.

Subpart K—Adjustments, Exceptions, and Appeals

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

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

Subpart L—Miscellaneous Provisions

Section 700.93—Communications. This section would make one non-substantive change by moving “and” to after “explanatory information.” It would add the address of the Office of Strategic Industries and Economic Security. It would also add “special” in

front of “priorities assistance” in the last paragraph to be consistent with this part.

Schedule I to Part 700—Approved Programs and Delegate Agencies

This section would revise 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 would be added that also clarifies that use of the authority under 15 CFR part 700 requires written authorization by the DOC to be consistent with other sections of 15 CFR part 700. It would also move footnote 2 to the end of the first paragraph and adds a cross reference to section 700.50 for additional information.

This section would update the description of the “A2” program identification symbol from “Missile” to “Missile and Space” in Schedule I in order to be 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 would remove 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 would update 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 would also make a non-substantive change to the description of

the “H1” program identification symbol to change “section” to the symbol.

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

This section would also add 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 proposes making 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 departments 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.

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 proposed rule.

Expected Impact of the Proposed Rule

BIS believes this 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 would not have a significant economic impact on government agencies or the public.

The administrative changes proposed are for 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 amendments proposed provide technical, non-substantive administrative 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 would not be changed. There are no proposed modifications to the procedures for the placement, acceptance, and performance of rated orders or for the allocation of materials, services, and facilities. Firms would not be 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 to the changes proposed amend the requirements or procedures for requesting Special Priorities Assistance (SPA).

Rulemaking Requirements

1. This rule has been determined to be 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 this rule, BIS is proposing changes to an existing approved information collection, *Request for Special Priorities Assistance* (OMB Control Number 0694–0057) which will be updated to reflect the changes discussed.

This collection currently carries a burden estimate of 30 minutes for an electronic submission for a total burden estimate of 22 hours. BIS believes the total burden hours are not expected to materially increase as a result of this

rule. The current version of this collection—including all background materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number. BIS is proposing changes to the form as discussed below.

The citation in the top paragraph would be updated from “50 U.S.C. App. 4455(d)” to “50 U.S.C. 4555(d).”

Block 1.a would be updated to include a field for country. BIS can currently receive applications from persons located outside of the United States. This proposed change would insert a field for an Applicant to provide the country in which the Applicant resides.

Block 1.b would be updated to include a field for country and an email address. This proposed change would insert a field for an Applicant customer, if not an end-user Government agency, to provide the country in which the Applicant customer resides as well as an email address for the Applicant customer.

Block 3 would be updated to include “manufacturer” as part of the description of the item. This proposed change is needed when the item the Applicant is requiring assistance with is not manufactured by the Applicant’s supplier listed in Block 4.a. This may occur, for example, if an Applicant is procuring the item through a distributor.

Block 4.a is updated to include a field for the country of the applicant’s supplier. Applicants may procure items that they need assistance with through foreign suppliers. For example, foreign applicants may request assistance with an item manufactured in the United States that they acquire through a foreign distributor. If an applicant is requesting DPAS rating authority, BIS requires the country information of the supplier listed in Block 4.a to ensure that the appropriate entities are authorized to place priority rated contracts and orders with suppliers physically located in the United States.

Block 8 would be updated to remove the information listed in the parentheses now that electronic signatures are available.

Block 9.g would be updated to remove specific references to the Department of Defense or foreign requests to allow for flexibility for each Determination Department request process.

Page 3 of Form BIS–999 titled, “INSTRUCTIONS FOR SUBMITTING FORM BIS–999” would be updated for ease of understanding and consistency with 15 CFR part 700, including the changes made by this proposed rule, and the delegations to the Delegate

Agencies from the Department of Commerce. The Office of Strategic Industries and Economic Security’s email address is also added as an option on how to submit Form BIS–999.

A. Public Reporting Burden

Public reporting burden specific to this proposed rule and the revision to collection of information previously approved is voluntary and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: 22.

Responses per Respondent: 1.

Total Responses: 22.

Hours per Response: 30 minutes.

Total Burden Hours: 11.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Requesters may obtain a copy of the information collection documents from Mark Crace at Mark.Crace@bis.doc.gov. Please cite “Information Collection 0694–0057, in all correspondence.

3. These proposed 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 proposed 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. Consequently, no regulatory flexibility analysis is required, and none has been

prepared. The factual support for this certification is provided below.

Number of Small Entities

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration’s Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Effective March 17, 2023), has a maximum annual revenue of \$47 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule would make non-substantive changes to clarify well-established standards and procedures under which BIS (or agencies to which BIS delegates authority) would authorize prioritization of certain orders or contracts as well as criteria under which BIS would issue orders allocating resources or production facilities. This proposed rule does not amend requirements for organizations that enter into contracts to supply materials, services and facilities that are necessary or appropriate for the national defense. Rather, this proposed rule would provide transparency to organizations on the DPAS to ensure ease of understanding and implementation of established processes.

BIS’s experience in administering its priorities authority indicates that for-profit businesses are the organizations that provide materials, services, and facilities necessary or appropriate to promote the national defense. If it becomes necessary to exercise allocations authority, the same types of materials, services, and facilities and the same types of businesses are the ones likely to be affected. Therefore, BIS believes that two of the categories of small entities identified by the RFA, small organizations and small government jurisdictions, are unlikely to experience any economic impact as a result of this proposed rule. However, BIS has no basis on which to estimate the number of small businesses that are likely to be affected by this proposed rule.

Impact

BIS believes that any impact that this proposed rule might have on small businesses would be minor. This proposed rule would not change the processes for the placement, acceptance, and performance of rated orders or for the allocation of materials, services, and facilities. Nor does this proposed rule change the procedures to request special priorities assistance. BIS expects that this proposed rule would not result in any increase in the use of rated orders. The standards under which a rated order would be issued are not changed by this proposed rule. Rather, this proposed rule provides simplifications and clarifications to the placement, acceptance, and performance of rated orders and the SPA process to ensure ease of understanding and implementation of established procedures.

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

Conclusion

Although BIS cannot determine precisely the number of small entities that would be affected by this proposed rule, BIS believes that the overall impact on such entities would not be significant as this proposed rule would provide administrative changes to well-established standards and procedures. Consequently, this proposed rule would not likely increase the number of rated contracts and orders compared to the number being placed currently. BIS believes that the expected unchanged level of contract and order prioritizations, planning and review requirements and requirements of section 701 of the DPA, which are directed at protecting the interests of small businesses, provide reasonable assurance that any impact on small business will not be significant. For the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce certified that this action would not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 700

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

Accordingly, 15 CFR part 700 of the DPAS regulation, proposes to amend 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. Adding in alphabetical order the definitions of “Determination Department”, “Facilities”, “Materials”, “Resource Department”, and “Services”;
 - b. Revising the definitions of “Approved program”, “Defense Production Act”, “Industrial resources”, “National defense”, “Official action”, “Priorities authority”, “Priority rating”, “Selective Service Act”, and “Stafford Act”; and
 - c. Removing the definition of “Item”.

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 “facilities” 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”).

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.

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

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) to read as follows:

§ 700.10 Authority.

(c) *Jurisdiction limitations.*

(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) *Levels of priority.*

(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 section 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: askcr@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) and adding new paragraph (a)(3) 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 the request supports a program 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, Denmark, Finland, Israel, Italy, Japan, Latvia, The Netherlands, Norway, 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, Finland, Israel, Italy, Japan, Latvia, The Netherlands, Norway, 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.
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.

Program identification symbol	Approved program	Agency(ies)
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	Pharmaceuticals and biological related products.	
M2	Health, medical, and safety supply chains.	
M3	Health related equipment, devices, and material.	
M4	Vaccines.	
M5	Mental Health.	
M6	Mitigation measures.	
M7	Facilities.	
M8	Personal protective equipment.	
M9	Miscellaneous.	

Program identification symbol	Approved program	Agency(ies)
[80 FR 42408; Jul. 15, 2015].		
<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	Certain combined orders.	
[80 FR 63890; Dec. 21, 2015].		
<i>Transportation Resources/Transportation Priorities and Allocations System (TPAS):</i>		
T1	Federal emergency preparedness, mitigation, response, and recovery.	

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration
 [FR Doc. 2024–01930 Filed 2–6–24; 8:45 am]
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POSTAL REGULATORY COMMISSION

39 CFR Parts 3000, 3010, 3040, 3041

[Docket No. RM2023–5; Order No. 6953]

RIN 3211–AA34

Competitive Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking seeks comment on a proposal for reviewing contracts negotiated between the Postal Service and customers for competitive services. These contracts are known as competitive negotiated service agreements (NSAs). The proposal includes a default method for reviewing competitive NSAs and three optional streamlined methods. Different requirements apply to each method for reviewing proposed competitive NSAs. In addition, the proposal includes requirements for administering approved competitive NSAs. The proposal is designed to streamline competitive NSA review, ensure transparency and accountability, preserve existing flexibility, and enable a smooth transition with minimum disruption for stakeholders. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 8, 2024; *Reply comments are due:* May 7, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives. The Rule Summary can be

found on the Commission's Rule Summary Page at <https://www.prc.gov/rule-summary-page>.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Basis of Proposed Rules
- III. Proposed Rules

I. Background

A Negotiated Service Agreement (NSA) is “a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract.” 39 CFR 3010.101(f). These NSAs require prior Commission approval before they are added to the applicable product lists; however, different statutory and regulatory criteria apply to the approval of Market Dominant NSAs and Competitive NSAs.¹

Before adding a product (such as a Competitive NSA) to the Competitive product list, the Commission undertakes two types of review: (1) review under 39 U.S.C. 3642; and (2) review under 39 U.S.C. 3633. Upon consideration of required information submitted by the Postal Service, including projections of the proposed product's revenues and costs and responses to any information requests,² the Commission determines whether the product complies with the requirements for Competitive products

in 39 U.S.C. 3642. The Commission also makes a preliminary determination of whether the proposed product will comply with the criteria outlined in 39 U.S.C. 3633(a). Final determination of compliance with 39 U.S.C. 3633(a) is made retrospectively, in the Commission's *Annual Compliance Determination(s)* (ACD), as set forth in 39 U.S.C. 3653.

Over the years, various efforts have sought to streamline review of NSAs in certain respects by applying the concept of functional equivalence to groups of NSAs.³ An “umbrella” product is a grouping of NSAs that are functionally equivalent to a baseline agreement. The Commission has used a functional equivalence analysis to approve “umbrella” product agreements.⁴ Non-published rates NSA products are a refinement of “umbrella” products that receive further streamlined review because the products “conform to a template agreement and offer prices within specified, pre-approved ranges.” Order No. 5753 at 3. These products must comply with Commission classification and regulatory requirements, including pre-approved pricing formulas, minimum cost coverage, and documentation, allow for a streamlined review process because

³ See, e.g., Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

⁴ See, e.g., Order No. 5753 at 2–3 (summarizing the Commission's approach to “umbrella” products); Docket No. R2013–9, Order Granting, in Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, in Part, Order No. 1864, August 11, 2014, at 7 (Order No. 2148) (allowing then-existing “umbrella” products to designate multiple baseline agreements but “plan[ning] to discontinue the practice of designating more than one baseline reference.”). The Commission also has considered similar arrangements termed “shell classifications,” which may use a “shell” or template in lieu of an actual agreement as a baseline. See Docket No. CP2008–8 *et al.*, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008, at 7–8 (Order No. 85); cf. Docket No. MC2008–6 *et al.*, Order Concerning Prices Under Inbound Direct Entry Contracts with Certain Foreign Postal Administrations, September 4, 2008, at 3, 7 (Order No. 105).

¹ See, e.g., 39 U.S.C. 3642; Postal Regulatory Commission, *Annual Report to the President and Congress Fiscal Year 2021*, January 25, 2022, at 26 (FY 2021 Annual Report) (stating that the Commission reviews Market Dominant NSAs to ensure they comply with 39 U.S.C. 3622(c)(10) and the Commission's regulations in 39 CFR part 3040, subpart G); *id.* at 28 (stating that Competitive NSAs require prior Commission review for compliance with 39 U.S.C. 3633(a) and 39 CFR part 3035). The focus of this docket is Competitive NSAs.

² See 39 CFR 3035.105. This information includes “[s]ufficient revenue and cost data for the 12-month period following the effective date of the rate or class to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2)[.]” 39 CFR 3035.105(c)(1).