

### § 327.3

### 44 CFR Ch. I (10–1–07 Edition)

#### § 327.3 Policy.

(a) *General.* (1) Primary reliance for defense production shall be placed upon private industry.

(2) When it is determined by an agency that, because of the lack of specific industrial plant equipment, private industry of the United States cannot be relied upon for needed Government production, that agency may provide to private industry such Government-owned industrial plant equipment as is deemed necessary to ensure required production capability. Requirements for such equipment should be reviewed at least annually to ascertain the continuing need, particularly with a view toward private industry furnishing the equipment for long term requirements.

(3) When it is necessary for Federal agencies to supply Government-owned industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made available for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contrac-

tors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Public Law 93-155, and statutory authority for leasing, Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

#### § 327.4 Disputes.

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Director, Federal Emergency Management Agency, shall adjudicate.

#### § 327.5 Reports.

Such reports of operations under this order as may be required by the Federal Emergency Management Agency, shall be submitted to the Director.

### PART 328 [RESERVED]

### PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO-12)

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## Federal Emergency Management Agency, DHS

## § 329.4

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 10480 of Aug. 14, 1953, (18 FR 4939) as amended.

SOURCE: 45 FR 44585, July 1, 1980, unless otherwise noted.

### § 329.1 Purpose.

This part provides policy guidance concerning the use of priorities and allocation authority under title I of the Defense Production Act of 1950, as amended, for the procurement of common use items in the Federal Supply Classification (FSC).

### § 329.2 Policies.

The following guidance is provided pursuant to the Defense Production Act of 1950, as amended; section 201 of Executive Order 10480, and § 322.2 of this chapter (DMO-3).

(a) Priority ratings under title I of the Defense Production Act of 1950, as amended, are not authorized for certain FSC Groups, Classes, and Items:

(1) Which are of the types commonly available in commercial markets for general consumption,

(2) Which do not require major modification when purchased for military or other ratable government use, and

(3) Which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

Such Groups, Classes, and Items will be as specified from time to time by the Department of Commerce with the approval of the Federal Emergency Management Agency. Procurement in these Groups, Classes, and Items is to be made without priority assistance, including single service procurement that may include defense and defense-supporting needs. In the event procurement difficulties are encountered which threaten timely delivery, application for special assistance may be made for those categories of supply authorized special assistance in existing lists, and must be accompanied by full justification to support the need for such assistance.

(b) Priority ratings may be used for the procurement of other authorized FSC Groups, Classes, and Items only in

quantities required to meet the needs of approved programs of ratable agencies. The quantities of current procurement of each Group, Class, and Item shall be based on and shall not exceed the ratio of rated purchases to total purchases for that Group, Class, and Item that was consummated in the 6-month period preceding the first day of January and July in each year. Any other periodic cycle considered suitable and agreed to by the Domestic and International Business Administration, Department of Commerce, and the procuring agency may be substituted.

(c) In the interest of minimizing administrative costs, where rated procurement under paragraph (b)(2) of this section, constitutes 97 percent or more of the total procurement of a Group, Class, or Item, all of the Group, Class, or Item may be bought on ratings.

### § 329.3 Procedures.

Requests for additional authorizations of Classes, Groups, or Items should be presented to General Services Administration (AP), Washington, DC, 20405, accompanied by a statement of justification indicating why the Class, Group, or Item should be regarded as necessary or appropriate to promote the national defense and why defense-related requirements cannot be met without the use of priorities.

### § 329.4 Implementation.

Departments and agencies involved with this program shall issue implementing instructions and directives no later than 30 work days from the effective date of this order. Copies of such instructions, directives, and related documents shall be furnished to the General Services Administration (AP) on a routine basis as issued.