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SCHEDULE I TO PART 789—APPROVED PROGRAMS AND DELEGATE AGENCIES

AUTHORITY: 50 U.S.C. App. 2061–2170, 2171, and 2172; 42 U.S.C. 5195–5197h.

SOURCE: 80 FR 63898, Oct. 22, 2015, unless otherwise noted.

Subpart A—General

§ 789.1 Purpose.

This part provides guidance and procedures for use of the Defense Production Act priorities and allocations authority by the United States Department of Agriculture (USDA) 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 in this part. (The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations issued under Executive Order 13603. Guidance and procedures for use of the Defense Production Act priorities and allocations authority with respect to other types of resources are as follows: For all forms of energy, refer to the Department of Energy's Energy Priorities and Allocations System (EPAS) regulation in 10 CFR part 217; for all forms of civil transportation, refer to the Department of Transportation's Transportation Priorities and Allocations System (TPAS) regulation in 49 CFR part

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33; for water resources, refer to the Department of Defense; for health resources, refer to the Department of Health and Human Services' Health Resources Priorities and Allocations System in 45 CFR part 101; and for all other materials, services, and facilities, including construction materials, refer to the Department of Commerce's Defense Priorities and Allocations System (DPAS) regulation in 15 CFR part 700.)

§ 789.2 Priorities and allocations authority.

(a) Section 201 of Executive Order 13603 (3 CFR, 2012 Comp., p. 225) delegates the President's authority under section 101 of the Defense Production Act to require acceptance and priority performance of contracts and 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 to the following agencies. Essentially, this allows the following agencies to place priority on the performance of contracts for items and materials under their jurisdiction as required for national defense initiatives including emergency preparedness activities:

(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.

(b) Section 202 of Executive Order 13603 specifies that the priorities and allocations authority may be used only

to support programs that have been determined in writing as necessary or appropriate to promote the national defense by:

(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; or

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

§ 789.3 Program eligibility.

Certain programs that promote the national defense are eligible for priorities and allocations support. These include 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. Other eligible programs include emergency preparedness activities conducted pursuant to Title VI of the Stafford Act and critical infrastructure protection and restoration.

Subpart B—Definitions

§ 789.8 Definitions.

Allocations means the control of the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocations order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity for a specific use of a material, service, or facility authorized to promote the national defense.

Animal means any member of the animal kingdom (except a human).

APAS means the Agriculture Priorities and Allocations System established by this part.

Applicant means the person applying for assistance under APAS. (See definition of “person.”)

Approved program means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, as specified in section 202 of Executive Order 13603.

Civil transportation includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. “Civil transportation” also includes direction, control, and coordination of civil transportation capacity regardless of ownership. “Civil transportation” does not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products that are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act means the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 to 2170, 2171, and 2172).

Delegate agency means a government agency authorized by delegation from USDA to place priority ratings on contracts or orders needed to support approved programs.