

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.

Directive means an official action that requires a person to take or refrain from taking certain actions in accordance with the provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions that would be created by the hazard, and to make emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Emergency preparedness includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Energy means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquefaction and coal gasification), solar, wind, other types of renewable energy, atomic energy, and the production, conservation, use, control, and distribution (includ-

ing pipelines) of all of these forms of energy.

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

Farm equipment means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

Feed is a nutritionally adequate manufactured food for animals (livestock and poultry raised for agriculture production); and by specific formula is compounded to be fed as the sole ration and is capable of maintaining life and promoting production without any additional substance being consumed except water.

Fertilizer means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

Food resources means all commodities and products (simple, mixed, or compound), or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products suitable for sale for human or animal consumption. Food resources also means potable water packaged in commercially marketable containers, all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

Food resource facilities means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, and for the domestic distribution of farm equipment and fertilizer (excluding transportation for that distribution).

Hazard means an emergency or disaster resulting from a natural disaster; or from an accidental or man-caused event.

Health resources means drugs, biological products, medical devices, materials, facilities, health supplies, services, and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population.

Homeland security includes efforts:

- (1) To prevent terrorist attacks within the United States;
- (2) To reduce the vulnerability of the United States to terrorism;
- (3) To minimize damage from a terrorist attack in the United States; and
- (4) To recover from a terrorist attack in the United States.

Industrial resources means all materials, services, and facilities, including construction materials, but not including: Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources.

Item means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Letter of understanding means an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (USDA, the Department of Commerce (if applicable), a delegate agency (if applicable), the supplier, and the customer).

Livestock means all farm-raised animals.

Livestock resources means materials, facilities, vehicles, health supplies, services, and equipment required for the production and distribution of livestock.

Maintenance and repair and operating supplies (MRO) means:

- (1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

- (2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

- (3) *Operating supplies* are any resources carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items.

- (4) *MRO* does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items that are still in working condition with items of a new or different kind, quality, or design.

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 means 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 Stafford Act and critical infrastructure protection and restoration.

Official action means an action taken by USDA or another resource agency under the authority of the Defense Production Act, Executive Order 13603, or this part. Such actions include the issuance of rating authorizations, directives, set-asides, allotments, letters

§ 789.10

of understanding, demands for information, inspection authorizations, and administrative subpoenas.

Person includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof, or any Federal agency.

Plant health resources means biological products, materials, facilities, vehicles, supplies, services, and equipment required to prevent the impairment of, improve, or restore plant health conditions.

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued as specified in the provisions of this part. Persons may request an order (contract) be rated in response to a need that is defined in this part. However, an order does not become rated until the request is approved by USDA. USDA will assign a rating priority for each rating request approved that designates the priority of that order over other orders that have similar order specifics.

Resource agency means any agency that is delegated priorities and allocations authority as specified in § 789.2.

Secretary means the Secretary of Agriculture.

Seed is used with its commonly understood meaning and includes all seed grown for and customarily sold to users for planting for the production of agriculture crops.

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;
- (3) The movement of individuals and property by all modes of civil transportation; or
- (4) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act means the Robert T. Stafford Disaster Relief and Emer-

7 CFR Ch. VII (1–1–16 Edition)

gency Assistance Act, as amended (42 U.S.C. 5195–5197h).

USDA means the U.S. Department of Agriculture.

Veterinary resources means drugs, biological products, medical devices, materials, facilities, vehicles, health supplies, services, and equipment required to diagnose, mitigate or prevent the impairment of, improve, treat, cure, or restore the health conditions of the animal population.

Water resources means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements, except water resources does not include usable water that qualifies as food resources.

Subpart C—Placement of Rated Orders

§ 789.10 Delegations of authority.

(a) [Reserved]

(b) Within USDA, authority to administer APAS has been delegated to the Administrator, Farm Service Agency, through the Under Secretary for Farm and Foreign Agricultural Services. (See §§ 2.16(a)(6) and 2.42(a)(5) of this title.) The Farm Service Agency Administrator will coordinate APAS implementation and administration through the Director, USDA Office of Homeland Security and Emergency Coordination, as delegated by the Assistant Secretary for Administration. (See §§ 2.24(a)(8)(ii)(A) and 2.24(a)(8)(v); 2.95(b)(1)(i) and 2.95(b)(4) of this title.)

§ 789.11 Priority ratings.

(a) *Levels of priority.* Priority levels designate differences between orders based on national defense including emergency preparedness requirements.

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

(2) All DO-rated orders have equal priority with each other and take precedence over unrated orders. All DX-rated orders have equal priority with each other and take precedence over DO-rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 789.14(c).)