

Quick Reference

What is the Defense Priorities and Allocations System (DPAS)?

DPAS is a statute-based regulatory scheme run generally by the Department of Commerce. DPAS permits certain agencies to issue “rated orders,” for goods and services under specified program. Rated orders, under certain circumstances, must be accepted and could force a business to put existing backlog on hold until the rated order can be fulfilled. See, 15 CFR Part 700.

How does a rated order work?

There are two levels of rated orders: a “DX” rating has a higher priority than a “DO” rating which, in turn, has a higher priority than an “unrated” order. Generally, within each rating level, orders must be fulfilled based on the earliest required delivery date. A prime contractor receiving a rated order can and, as necessary, must, “flow down” the rating to subcontractors or vendors throughout the supply chain.

When can an agency issue a rated order?

An agency can issue a rated order in support of a specified, approved national defense, emergency preparedness and emergency production maximization programs. To be an approved program, DOD, DOE, DHS or DHHS must determine that the requirement is necessary or appropriate to promote the national defense or address a national emergency.

Does a business have to accept a rated order?

Not necessarily. There are times when a rated order *must be accepted*, times when an order *must be rejected*, and times when an order *may be rejected*. The DPAS Regulations define these decision points.

What does a rated order recipient do if it accepts an order but then has difficulty meeting a required delivery date?

Recipients may request Special Priorities Assistance (SPA) from the Department of Commerce Bureau of Industry and Security (BIS) or authorized agencies in resolving production or delivery problems that arise. SPA may be requested for any reason in support of the DPAS, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders.

What happens if a rated order recipient doesn't follow the DPAS rules?

A person who willfully violates the DPAS is subject to civil fines, criminal penalties, injunctive action, contractual remedies and administrative actions such as suspension and debarment.

Best Practices

Know the rules.

The DPAS regulations are not complicated or lengthy and some agencies have published manuals or guidebooks describing their application of the DPAS program. For example, the BIS website publishes a link to the DOD DPAS Manual: <https://www.bis.doc.gov/index.php/documents/sies/497-department-of-defense-s-priorities-and-allocations-manual-dod-4400-1-m/file>

Move out smartly.

Time is obviously of the essence in any rated order case, so beyond the required delivery date, there are strict rules for when certain actions must be taken – for example, when to reject an order or to request SPA.

Communicate.

Effective, clear and timely communication, up and down the supply chain, is critical. To seek SPA, for example, an applicant must be able to show it has made a reasonable effort to solve the problem on its own – which requires communication.

Don't discriminate.

A recipient may not use a rated order to gain a better price, obtain delivery sooner than needed or otherwise to gain an unfair competitive advantage. In particular, be prepared to justify any price increases over standard rates.

Document everything.

Rated orders are often associated with high visibility requirements or programs with many stakeholders and elevated risk of audit, investigations or high-level oversight. Assume everything done will come under official scrutiny – make and keep detailed records of who does it, what is done, when it is done, and why it is done.

▼ For additional information, please contact:

Eric W. Leonard | 202.719.7185 | eleonard@wiley.law

Richard B. O'Keefe, Jr. | 202.719.7396 | rokeefe@wiley.law