



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR 700

[Docket No. 260804-0143]

0694-AK51

DPAS Directive Allocation Order and Additional Requirements for Recoverable Critical Minerals and Materials

AGENCY: Bureau of Industry and Security, Department of Commerce

ACTION: Temporary final rule; Request for comments.

SUMMARY: The Bureau of Industry and Security (“BIS”) is publishing this temporary final rule to restrict the exportation of black mass and tungsten waste and scrap without a license.

Specifically, as of [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], U.S. persons engaged in the sale of black mass and tungsten waste and scrap must allocate 100 percent of monthly sales to U.S. persons, unless an adjustment or exception is obtained in advance from BIS. This action is taken pursuant to section 101 of the Defense Production Act of 1950, as amended (“DPA” or the “Act”), the Defense Priorities and Allocations System (15 CFR Part 700) and Presidential Determination Pursuant to Section 101 of the Defense Production Act of 1950, as Amended, on Recoverable Critical Minerals and Materials, dated July 30, 2026 (“DPA Determination on Recoverable CMMs”), in which the President authorized the Department of Commerce (“Commerce”) to address the scarcity of recoverable critical minerals and materials (“CMMs”). BIS invites the public to submit comments on whether any additional sales requirements are necessary or appropriate to promote the national defense.

DATES: *Directive Allocation Order Effective date:* [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE 386 DAYS

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Request for Adjustment and Exceptions date: Requests may be submitted on a rolling basis beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE 386 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Requests for an adjustment or exception may be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security via DPASAllocations@bis.doc.gov.

Comments regarding this temporary final rule may be submitted to the Federal rulemaking portal at: <https://www.regulations.gov>. The regulations.gov ID for this notice is BIS-2026-0364. Please refer to RIN 0694-AK51 in all comments. All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion 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 at: <https://www.regulations.gov>. Commenters submitting business confidential information are

encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: Emily Noel, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Department of Commerce, Telephone: 202-482-3634; email: DPASAllocations@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

The preamble to this temporary final rule consists of four sections:

I. Legal Authorities

II. Provisions of the Temporary Final Rule

III. Request for Comment

IV. Rulemaking Requirements

I. Legal Authorities

BIS administers the DPAS regulation which implements the priorities and allocations authority under Title I of the DPA (50 U.S.C. § 4501, et. seq.), with respect to all materials, services, and facilities, including construction materials, not delegated to other Secretaries under Executive Order (“E.O.”) 13603. These materials, services, and facilities are referred to as “industrial resources.”

On July 30, 2026, the President issued DPA Determination on Recoverable CMMs. Under DPA Determination on Recoverable CMMs, the President found that certain recoverable CMMs are scarce and critical materials essential to the national defense. The President stated that the inadequate supply of CMMs poses an increasing risk to our national defense and security, and it is imperative that the United States take immediate action to secure the supply of recoverable CMMs. Accordingly, pursuant to section 101 of the DPA, the President found that recoverable CMMs meet the criteria specified in section 101(b) of the DPA (50 U.S.C. 4511(b)). With these findings, the President authorized the Secretary of Commerce (“Secretary”) to use the

Secretary's delegated authority under E.O. 13603 of March 12, 2012 (National Defense Resources Preparedness) to implement this determination by taking all appropriate action under section 101 of the DPA.

II. Provisions of the Temporary Final Rule

BIS has determined that sales by U.S. persons of certain scarce materials identified in DPA Determination on Recoverable CMMs shall be allocated to U.S. persons through an Allocation Order, which are described in pursuant to Subpart F of Part 700 (DPAS). Consistent with section 709(b)(2) of the DPA (50 USC 4559(b)(2)), this Allocation Order and associated necessary conforming revisions to the DPAS regulations are published as a temporary final rule because BIS has determined that urgent and compelling circumstances make compliance with prior notice and opportunity for public comment impracticable. This temporary rule is necessary to immediately secure the supply of certain recoverable CMMs to ensure an adequate supply of these materials deemed essential to the national defense, as required by the President under DPA Determination on Recoverable CMMs.

Specifically, BIS is publishing this temporary final rule to implement a Directive Allocation Order, as described in § 700.33 (Types of allocation orders) in the DPAS. The industrial resources specified in the Directive Allocation Order may not be exported from the United States without explicit authorization by BIS. This Directive Allocation Order and the associated regulatory revisions in this temporary final rule expire one year from its effective date, unless adjusted or extended by BIS prior to the expiration date in a Federal Register publication.

A. Regulatory Revisions

BIS is revising § 700.34 of the DPAS to add new paragraph (d), to include a provision to issue allocation orders through a temporary final rule in the Federal Register. In addition, BIS is adding new supplement no. 1 to part 700 to issue a Directive Allocation Order pursuant to new paragraph § 700.34(d). The new supplement includes:

- Information regarding scope and definition of terms that apply solely to the Directive Allocation Order issued by publication of this temporary final rule (and not to other provisions within the DPAS);
- Adjustment and exceptions requirements for this Directive Allocation Order issued by a temporary final rule;
- Additional compliance guidance; and
- A table that identifies the scarce and critical materials deemed essential to national defense under DPA Determination on Recoverable CMMs, identified by 10-digit Schedule B codes and accompanying description. The table includes the monthly domestic sales requirement percentage, as well as effective date and expiration date of this Directive Allocation Order.

The provisions in the supplement apply solely to the Directive Allocation Order and do not apply to other official actions taken pursuant to the DPAS. Additionally, BIS is making conforming changes to §§ 700.8 (Definitions) and 700.80 (Adjustments or exceptions) to include reference to supplement no. 1 to part 700 and the specific provisions that are exclusively required for allocation orders issued through a temporary final rule in the Federal Register in new supplement no. 1 to part 700.

B. Directive Allocation Order Requirements for Black Mass and Tungsten Waste and Scrap

U.S. persons engaged in the sale of materials described and identified by Schedule B codes listed in Table 1 of this supplement are required to comply with this order, in accordance with the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

As of [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], U.S. persons engaged in the sale of ‘black mass’ and tungsten waste and scrap, must allocate 100 percent of monthly sales to U.S. persons, as specified in new supplement no. 1 to part 700 of the DPAS. For purposes of this Directive Allocation Order, “black mass” means

any shredded lithium-ion battery scrap that contains cathode material (which may include lithium, cobalt, nickel and manganese), anode material (graphite, silicon) or other residual battery cell materials.

Accordingly, starting [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], U.S. persons engaged in the sale of black mass (Schedule B codes 8549.13.00.00, 8549.14.00.00, and 8549.19.00.00) and tungsten waste and scrap (Schedule B code 8101.97.00.00) must allocate 100 percent of monthly sales to U.S. persons (referred to as a “domestic sales requirement”), unless an exception or adjustment is granted by BIS, as described in Section II.C of this temporary final rule. The domestic sales requirement for electrical and electronic waste and scrap: waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators: sorted by chemical type and not containing lead, cadmium or mercury (Schedule B code 8549.13.00.00); electrical and electronic waste and scrap: waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators: unsorted and not containing lead, cadmium or mercury (Schedule B code 8549.14.00.00); and electrical and electronic waste and scrap: waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators: other (Schedule B code 8549.19.00.00) are limited to materials that meet the definition of “black mass”, as defined in supplement no. 1 to part 700. Materials under these Schedule B codes that do not meet this definition of “black mass” are not subject to this Directive Allocation Order.

Therefore, starting [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], “black mass” (Schedule B codes 8549.13.00.00, 8549.14.00.00, and 8549.19.00.00) and tungsten waste and scrap (Schedule B code 8101.97.00.00) must remain physically located within the United States, unless otherwise authorized by BIS. U.S. persons must continue to fill DPAS rated orders for covered black mass and tungsten waste and scrap

from U.S. persons in accordance with the DPAS regulations. In accordance with new Supplement no. 1 to part 700(c), implemented through this temporary final rule, BIS may grant exceptions or adjustments on a case-by-case basis to allow sales to non-U.S. persons, notwithstanding the domestic sales requirement.

C. Authorizations for Adjustments and Exceptions

While Subpart K of the DPAS describes the Adjustments, Exceptions and Appeals process, U.S. persons who are subject to the domestic sales requirement for “black mass” and tungsten waste and scrap must submit a request for an adjustment or exception, following the process described in new supplement no. 1 to part 700(c). BIS may authorize both company-specific and generally applicable adjustments or exceptions from the sale requirement at its discretion, consistent with the determination that the restrictions covered by this rule are necessary or appropriate to promote the national defense. In addition, BIS may authorize interim relief – i.e., a DPAS temporary license – while a request is pending. A DPAS temporary license or other type of approval which provides authorization from BIS for an adjustment or exception to this Directive Allocation Order is neither equivalent to nor replaces licenses or other authorizations to export, reexport, or transfer (in-country) commodities, technology, or software pursuant to the Export Administration Regulations (15 CFR Parts 730-774). Persons granted a DPAS license or DPAS temporary license under the Directive Allocation Order must otherwise adhere to U.S. export control regulations.

BIS will consider granting adjustments, exceptions, or interim relief for this Directive Allocation Order for the following scenarios, among others:

- The domestic sales requirement results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances.
- The consequence of complying with the domestic sales requirement is contrary to the intent of the DPA or this part – for example, because it would reduce the domestic supply of CMMs.

- A U.S. person plans to sell black mass and tungsten waste and scrap to a person located outside the United States for processing or refining, and then the processed/refined material will be returned to the United States.
- Compliance with the domestic sales requirement will result in irreparable harm to a U.S. person who is subject to the order.
- Additional time is needed to comply with the domestic sales requirements.

Requests for adjustments and exceptions must be made in writing and provided to BIS via DPASAllocations@bis.doc.gov. Each request for adjustment or exception must contain a complete statement of all the facts and circumstances related to the domestic sales requirement from which relief is sought, and a full and precise statement of the reasons why relief should be provided; and relevant supporting documents or data to support the request.

The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the domestic sales requirement while the request is being considered, unless such interim relief is granted in writing. BIS intends to respond to requests for adjustment of or exceptions to compliance with the domestic sales requirement within 14 days of the date of receipt. An appeal for a decision under this section may be made in accordance with 15 CFR 700.81. For more information regarding adjustments and exception requests, please refer to 15 CFR 700.80.

D. Compliance and Procedures

Compliance provisions in Subpart J of the DPAS continue to apply. U.S. persons are required to comply with allocation orders and the terms of any adjustment or exception authorizations granted, in accordance with 15 CFR 700.35. Further, in accordance with 15 CFR 700.90, section 707 of the DPA (50 U.S.C. § 4557), and to the fullest extent consistent with applicable law, a person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with the DPAS regulation, or this Directive Allocation Order, notwithstanding that such provision or action shall subsequently be declared

invalid by judicial or other competent authority.

If a U.S. person is unable to comply fully with the required action(s) specified in an allocation order, the U.S. person must notify BIS immediately in writing, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. Written notification must be provided to BIS via DPASAllocations@bis.doc.gov. If notification is given verbally to BIS via 202-482-3634, written or electronic confirmation must be provided to BIS within one working day via DPASAllocations@bis.doc.gov. Such notification does not release the U.S. person from complying with the order to the fullest extent possible, until the U.S. person is notified by BIS that the order has been changed or cancelled.

BIS will implement this temporary final rule with the cooperation and assistance of other U.S. Government agencies, including U.S. Customs and Border Protection (CBP). Any covered materials intended for export may be detained by CBP while BIS conducts its review of the shipment. BIS will review the shipment and provide notification as soon as possible regarding the disposition of the covered materials under this Directive Allocation Order, provided that any goods that have been detained by CBP and are subsequently made subject to a DPAS rated order will be consigned to BIS pending further distribution or agency direction. BIS may provide additional guidance regarding the application of any exemptions to this temporary final rule, as appropriate.

BIS may conduct investigations and issue requests for information as may be necessary for the enforcement of the Act, the DPAS regulations, and this Directive Allocation Order. *See* 15 CFR 700.71; *see also* section 705 of the Act, 50 U.S.C. 4555. BIS may also seek an injunction or other order in accordance with 15 CFR 700.74(b). *See also* section 706 of the Act, 50 U.S.C. 4556. In addition to an injunction, failure to comply fully with this temporary final rule is punishable in accordance with 15 CFR 700.74(a). *See also* sections 103 and 705 of the Act, 50 U.S.C. 4513 and 4555.

At any point in time, and to the extent consistent with United States policy, BIS may

determine that additional materials identified in DPA Determination on Recoverable CMMs be subject to an allocation order. BIS may add additional materials to this Directive Allocation Order and will provide notification of this decision through publication in the Federal Register.

III. Request for Comments

While this temporary final rule is effective on publication, BIS requests comments on whether any additional sales requirements are necessary or appropriate to promote the national defense. In addition, BIS also welcomes comments on the framework of the temporary regulatory provisions added to the DPAS.

IV. Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This temporary final rule has been determined to be a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. This temporary final rule is exempt from Executive Order 14192 because it is being issued with respect to a national security function of the United States.

2. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

3. This rule is exempt from the Administrative Procedures Act (APA) (*See* 5 U.S.C. 553) and is published as a temporary rule with immediate effective date. Agency rulemaking is generally governed by the agency rulemaking provisions of the APA and such provisions generally require that, unless the rule falls within one of a number of enumerated exceptions, or unless another statute exempts the rulemaking from the requirements of the APA, BIS must publish a notice of proposed rulemaking in the Federal Register that provides interested persons an opportunity to

submit written data, views, or arguments, prior to finalization of regulatory requirements.

Pursuant to section 709(a) of the Act, 50 U.S.C. 4559(a), this rule is exempt from the rulemaking provisions of the APA, sections 5 U.S.C. 551-559. While section 709(b)(1) of the Act, 50 U.S.C. 4559(b)(1) requires agencies to promulgate regulations under that section by providing notice and opportunity for public comment “consistent with section 553(b)”, section 709(b)(2) directs agencies to waive the requirements of 5 U.S.C. 553(b) if (A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable; (B) the regulation is issued on a temporary basis; and (C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final. Based on the findings in DPA Determination on Recoverable CMMs, which already have been summarized in this document, the Under Secretary for Industry and Security has determined “that urgent and compelling circumstances make compliance” with the notice and comment requirements of section 709(b)(1) of the Act, 50 U.S.C. 4559(b)(1), “impracticable.” An opportunity for public comment is being provided now for a period of 90 days, which shall ensure that a minimum 30-day public comment period is provided before any provisions of this temporary final rule “become final,” *i.e.* without an expiration date, pursuant to section 709(b)(2)(C) of the Act, 50 U.S.C. 4559(b)(2)(C).

America’s inadequate supply of CMMs poses an increasing risk to our national defense and security. The United States relies heavily on imports of certain CMMs commodities from foreign sources, and this reliance threatens serious, sustained supply chain disruptions. It is imperative that the United States take immediate action to secure the supply of recoverable CMMs by allocating a percentage of sales of specific recoverable CMMs to U.S. persons.

The measures described in this rule are being issued on a temporary basis. This temporary rule will cease to be in effect on [INSERT DATE 386 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the APA (5 U.S.C. 553) or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

5. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

On July 30, 2026, the President issued a Presidential Determination titled “Presidential Determination Pursuant to Section 101 of the Defense Production Act of 1950, as Amended, on Recoverable Critical Minerals and Materials” (“DPA Determination on Recoverable CMMs”). Under DPA Determination on Recoverable CMMs, the President found that recoverable critical minerals and materials (CMMs) are scarce and critical materials essential to the national defense, meeting the criteria specified in section 101(b) of the DPA (50 U.S.C. 4501, *et seq.*). Per DPA Determination on Recoverable CMMs, the President found that America’s inadequate supply of CMMs poses an increasing risk to our national defense and security and directed the Secretary to take immediate action to secure the supply of recoverable CMMs.

BIS cannot reasonably comply with the normal PRA clearance process as a delay in BIS’s ability to begin immediate information collection from companies engaged in the sale of recoverable CMMs to ensure a continued and adequate supply of these items, which are scarce and critical materials essential to the national defense. The Department has determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally

associated with a routine submission for review under the provisions of the Paperwork Reduction Act in view of DPA Determination on Recoverable CMMs, <https://www.whitehouse.gov/presidential-actions/2026/07/presidential-determination-pursuant-to-section-101-of-the-defense-production-act-of-1950-as-amended-on-recoverable-critical-minerals-and-materials/>.

b. The collection of information is essential to the mission of the Department, in particular to promote the national defense; and to allocate materials, services, and facilities in such a manner, upon such conditions, and to such extent as the President shall deem necessary or appropriate to promote the national defense, as defined in the DPA.

c. Public harm is reasonably likely to result if BIS were to follow the normal clearance procedures before issuing this information collection. A delay in BIS's ability to begin immediate information collection from companies engaged in the sale of recoverable CMMs will lead to increased scarcity of these materials through additional exports, posing an imminent threat to U.S. military readiness and critical infrastructure sectors. BIS is required to issue official actions under the DPAS regulation and collect certain critical information from companies engaged in the sale of recoverable CMMs to effectuate DPA Determination on Recoverable CMMs and ensure compliance with the DPAS regulation and the official actions issued, as described in sections 700.80, 700.81, and 700.91 of the DPAS regulation. These collection requirements may include buyer information, the applicable material and Schedule B code, quantity of material, and value of the sale. BIS may issue additional allocation orders as required to meet the objectives of DPA Determination on Recoverable CMMs.

For the reasons stated above, BIS has requested, and OMB has granted, a new information collection for this rule under OMB control number 0694-0148 with the title *Directive Allocation Orders under the Defense Priorities and Allocations System in Response to Presidential Determination on Recoverable Critical Minerals and Materials*. All materials for the currently approved collection can be accessed at www.reginfo.gov. Separately, BIS will be publishing a 60

day notice to take comment on the emergency collection.

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

For the reasons set forth in the preamble, part 700 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

1. The authority citation 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 700.8 is amended by revising the definition of “person” to read as follows:

§ 700.8 Definitions.

* * * * *

Person. Any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof; or any authorized State or local government or agency thereof; and for purposes of administration of this part, includes the United States Government and any authorized foreign government or international organization or agency thereof, delegated authority as provided in this part (for Directive Allocation Orders issued by a temporary final rule, see supplement no. 1 to part 700, paragraph (b)).

* * * * *

3. Revise § 700.34 to read as follows:

§ 700.34 Elements of an allocation order.

Allocation orders may be issued directly to the affected persons, by constructive notice to

the parties through publication in the Federal Register, or by the publication of a temporary final rule in the Federal Register. This section describes the elements that each order must include.

(a) *Elements to be included in all allocation orders.* (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.

(2) Specific start and end calendar dates for each required allocation action.

(b) *Elements to be included in orders issued directly to affected persons.* (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).”

(2) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an authorized official or employee of the Department of Commerce.

(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).”

(2) The order must be signed by an authorized official or employee of the Department of Commerce.

(d) *Elements to include in an allocation order issued by publication of a temporary final rule in the Federal Register in supplement no. 1 to part 700.* (1) A statement/temporary final rule 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).”

(2) The order must be signed by an authorized official or employee of the Department of Commerce.

(3) The temporary final rule will include:

(i) A statement of the specific objective(s) of the allocation order;

(ii) A list of the materials, services, and/or facilities to be allocated;

(iii) A list or description of the sources of the materials, services, or facilities subject to the allocation order; and

(iv) A detailed description of the provisions that will be included in the allocation order, including the type of allocation order, the percentages or quantity to be allocated, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation order (*e.g.*, anticipated start and end dates).

4. Amend § 700.80 by adding introductory text to read as follows:

§ 700.80 Adjustments or exceptions.

The adjustments or exceptions described in this section apply to this part and official actions issued under this part, except for Directive Allocation Orders issued by a temporary final rule. The adjustment or exception process for Directive Allocation Orders issued by a temporary final rule are contained in each Directive Allocation Order, see supplement no. 1 to part 700, paragraph (c).

5. Supplement no. 1 to part 700 is added to read as follows:

Supplement No. 1 to Part 700 - Directive Allocation Order and Additional Requirements for Recoverable Critical Minerals and Materials

(a) *Scope.* This is a Directive Allocation Order certified for national defense use. U.S. persons engaged in the sale of materials described and identified by Schedule B codes listed in Table 1 of this supplement are required to comply with this order, in accordance with the

provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700). U.S. persons engaged in the sale of such materials must allocate the listed monthly sales requirement percent to U.S. persons, as specified in Table 1. The effective dates of the Directive Allocation Order are listed in Table 1 to this supplement. U.S. persons subject to this Directive Allocation Order are required to comply with this order, in accordance with the provisions of this part (15 CFR part 700). This Directive Allocation Order applies to rated orders and unrated orders. U.S. persons must continue to fill rated orders for black mass (Schedule B codes 8549.13.00.00, 8549.14.00.00, and 8549.19.00.00) and tungsten waste and scrap (Schedule B code 8101.97.00.00) from U.S. persons in accordance with this part.

(b) *Definitions.* The definitions in this paragraph apply to this supplement only. In the case where a term is defined in both § 700.8 and (b) of this supplement, the definition in (b) of this supplement supersedes the definition in § 700.8.

“Black mass” means any shredded lithium-ion battery scrap that contains cathode material (which may include aluminum, copper, iron, lithium, cobalt, nickel, and manganese), anode material (graphite, silicon) or other residual battery cell materials.

“Person” means any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof.

“Sale” means transactions in any state, territory, or possession of the United States, in accordance with 15 CFR 700.92(a), and deliveries to other persons, including deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control, as described in 15 CFR 700.92(b).

“United States” means any state, territory, possession of the United States, and the District of Columbia.

“U.S. person” means any individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof located in the United

States.

(c) *Authorizations for Adjustments and Exceptions.* For purposes of the Directive Allocation Order, U.S. persons who are subject to the Directive Allocation Order may submit a request for an adjustment or exception. BIS may authorize both company-specific and generally applicable adjustments or exceptions – i.e., a DPAS license – from the domestic sale requirement at its discretion, consistent with the determination that the restrictions covered by this rule are necessary or appropriate to promote the national defense. In addition, BIS may authorize interim relief – i.e., a DPAS temporary license – while a request is pending. For purposes of this Directive Allocation Order, U.S. persons who are subject to the domestic sales requirement may submit a request to BIS, for an adjustment or exception on the grounds that, among others:

(1) The domestic sales requirement results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances.

(2) The consequence of complying with the domestic sales requirement is contrary to the intent of the DPA or this part – for example, because it would reduce the domestic supply of CMMs.

(3) A U.S. person plans to sell black mass and tungsten waste and scrap to a person located outside the United States for processing or refining, and then the processed/refined material will be returned to the United States.

(4) Compliance with the domestic sales requirement will result in irreparable harm to a U.S. person who is subject to the order.

(5) Additional time is needed to comply with the domestic sales requirements.

Requests for adjustments and exceptions must be made in writing and provided to BIS via email at DPASAllocations@bis.doc.gov. Each request for adjustment or exception must contain a complete statement of all the facts and circumstances related to the domestic sales requirement from which relief is sought, a full and precise statement of the reasons why relief should be provided; and relevant supporting documents or data to support the request.

The submission of a request for adjustment or exception shall not relieve any U.S. person from the obligation of complying with the provisions the Directive Allocation Order in while the request is being considered unless such interim relief is granted in writing by BIS. BIS intends to respond to requests for adjustment of or exceptions to compliance within fourteen (14) days, but in any event, responses to requests will be consistent with section 700.80.

If an adjustment or exception is authorized by BIS, BIS will provide to the requestor a DPAS authorization, in writing, which will specify the Schedule B codes the adjustment or exception applies to, the adjustment or exception terms (which may include the quantity or volume authorized), and the period of validity of the adjustment or exception. The requester must comply with the terms specified in the authorization.

A DPAS authorization granted for a Directive Allocation Order adjustment or exception is neither equivalent to, nor replaces, licenses or other authorizations to export, re-export, or transfer (in-country) commodities, technology, or software pursuant to the Export Administration Regulations (15 CFR Parts 730-774). U.S. persons granted a DPAS authorization must otherwise adhere to U.S. export control regulations.

A decision may be appealed to the Assistant Secretary for Export Administration. (For information on the appeal procedure, see § 700.81.)

(d) Compliance.

U.S. persons are required to comply with the Directive Allocation Order and the terms of any adjustment or exception granted, in accordance with 15 CFR 700.35. Subparts J and L continue to apply.

Table 1: Directive Allocation Order Domestic Sales Requirements

Schedule B Code	Description	Monthly Sales Requirement	Effective Date	Expiration Date
8101.97.00.00	Tungsten Waste and Scrap	100%	[INSERT DATE 21 DAYS	[INSERT DATE 386 DAYS

Schedule B Code	Description	Monthly Sales Requirement	Effective Date	Expiration Date
			AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]
8549.13.00.00	Electrical and electronic waste and scrap: waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators: sorted by chemical type and not containing lead, cadmium or mercury. Sales requirement only applies if the waste and scrap meet the definition of black mass, as described in Section II.B.	100%	[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	[INSERT DATE 386 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]
8549.14.00.00	Electrical and electronic waste and scrap: waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators: unsorted and not containing lead, cadmium or mercury. Sales requirement only applies if the waste and scrap meet the definition of black mass, as described in Section II.B.	100%	[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	[INSERT DATE 386 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]
8549.19.00.00	Electrical and electronic waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, primary batteries and electric accumulators: other. Sales requirement only applies	100%	[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	[INSERT DATE 386 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

Schedule B Code	Description	Monthly Sales Requirement	Effective Date	Expiration Date
	if the waste and scrap meet the definition of black mass, as described in Section II.B.			

Jessica Curyto,

Deputy Assistant Secretary for Technology Security.

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