

§ 101.38 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order pursuant to this part unless the person in receipt of the rated order has been explicitly authorized to do so by HHS or a Delegate Agency or is otherwise permitted to do so by this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by HHS (see § 101.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by HHS, or as otherwise permitted by this part; or

(v) Any of the following items unless specific priority rating authority has been obtained from HHS, a Delegate Agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 101.41.]

(C) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons unless such development or production has been authorized by the President or the Secretary of Defense. This provision does not however prohibit the use of the priority and allocations authority to acquire or produce qualified countermeasures that are necessary to treat, identify, or prevent harm from any biological or chemical agent that may pose a public health threat affecting national security.

(b) *Jurisdictional limitations.* Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(1) Food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(2) All forms of energy (Resource agency with jurisdiction—Department of Energy);

(3) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(4) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers);

(5) All materials, services, and facilities, including construction materials (industrial resources) for which the authority has not been delegated to other agencies under E.O. 13603 (Resource agency with jurisdiction—Department of Commerce);

(6) The priorities and allocations authority of this part may not be applied to communications services (Resource agency with jurisdiction—National Communications System under E.O. 13618 of July 6, 2012).