

## Bureau of Industry and Security, Commerce

## § 700.74

to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

### § 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Chief Counsel for Industry and Security, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998; 67 FR 45633, July 10, 2002]

### § 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production

Act, the Selective Service Act and related statutes, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this regulation, or an official action.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

### § 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or Sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes, this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both. The maximum penalty provided by the Selective Service Act and related statutes is a \$50,000 fine, or three years in prison, or both.

(b) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

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(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, re-delivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

### § 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, the Selective Service Act and related statutes, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998]

## Subpart K—Adjustments, Exceptions, and Appeals

### § 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act, the Selective Service Act and related statutes, or this regulation.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement

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of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Strategic Industries and Economic Security.

(d) A decision of the Office of Strategic Industries and Economic Security under this section may be appealed to the Assistant Secretary for Export Administration, U.S. Department of Commerce. (For information on the appeal procedure, see § 700.81.)

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, 31925, June 11, 1998]

### § 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Strategic Industries and Economic Security under § 700.80, may appeal to the Assistant Secretary for Export Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Strategic Industries and Economic Security. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Assistant Secretary for Export Administration.