

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.