



Maximizing Domestic Energy Supplies



Overview



- Under Title I of the Defense Production Act of 1950 (DPA), the President is authorized to require the use of priority performance of contracts or orders relating to, or the allocation of, materials, equipment, or services to maximize domestic energy supplies.
- Projects that maximize domestic energy supplies include those which:
 - maintain or further domestic energy exploration, production, refining, and transportation;
 - maintain or further the conservation of energy; or
 - are involved in the construction or maintenance of energy facilities.
- Use of this authority requires the President to make a finding that the materials (including equipment), services, and facilities are critical and essential as described in the DPA.
- Under section 203 of Executive Order (E.O.) 13603, the Secretary of Commerce is delegated by the President the priorities and allocations authorities to maximize domestic energy supplies and implements this authority through the Defense Priorities and Allocations System (DPAS) regulation.
 - However, the required finding for use of this authority is delegated by the President to the Secretary of Energy.



Overview



- The Departments of Commerce (DOC) and Energy (DOE) have published regulations which establish and describe procedures to be used in implementing the authority under section 101(c) of the DPA.
 - The DOE regulations (10 CFR part 216) establish the procedures and criteria used in deciding whether programs or projects maximize domestic energy supplies and whether supplies of materials and equipment are critical and essential, as contemplated under section 101(c) of the DPA.
 - DOC/Bureau of Industry and Security's (BIS) Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) establishes the procedures and criteria used in finding whether the supplies of materials and equipment are scarce and whether there is a need to use the DPAS (*see* Subpart E of the DPAS regulation).



Application Process



- The DPAS regulation (15 CFR § 700.21) outlines DOC's application process for a priority rating authorization for projects which maximizes domestic energy supplies.
- For projects believed to maximize domestic energy supplies, a person may submit a request to DOE as outlined in 10 CFR part 216.
- In processing applications for use of this authority, certain findings and determinations must be made before DOC/BIS grants a priority rating authorization.
- The DOE must:
 1. Determine whether the energy program or project for which priorities or allocations authority is requested maximizes domestic energy supplies, and
 2. Find whether the materials and equipment are critical and essential to the program or project.
- The DOC must find:
 1. That the supplies of materials and equipment are scarce, and
 2. That there is a need to use the DPAS.
- Information obtained related to these applications is deemed confidential under section 705(d) of the DPA which prohibits publication or disclosure of information unless the President determines that withholding it is contrary to the interest of the national defense. DOC will assert the appropriate Freedom of Information Act (FOIA) exemptions if such information is the subject of FOIA requests.



Considerations



- If DOE notifies DOC that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, DOC will determine whether the items in question are scarce, and, if they are scarce, whether there is a need to use the priority rating.
- Scarcity for the purposes of this finding implies unusual difficulty in obtaining the materials, equipment, or services in a time frame consistent with the timely completion of the energy project.
- In determining scarcity, DOC/BIS may consider the following factors:
 - Value and volume of material or equipment shipments;
 - Consumption of material and equipment;
 - Volume and market trends of imports and exports;
 - Domestic and foreign sources of supply;
 - Normal levels of inventories;
 - Rates of capacity utilization;
 - Volume of new orders; and
 - Lead time for new orders.



Authorization



- After DOC has conducted its analysis, it will advise DOE of its findings as outlined in the DPAS regulation.
- If the findings are satisfied, DOC will assign a priority rating, consisting of the rating symbol and program identification symbol, and authorize DOE to grant the use of a priority rating to the applicant to obtain specifically described materials and equipment.
 - Schedule I of the DPAS regulation includes a list program identification symbols and their corresponding approved programs to support the maximization of domestic energy supply.
- DOE will authorize the applicant to apply the priority rating to contracts or orders for specific materials or equipment.
- In using the priority rating authority, the applicant is governed by the provisions of the DPAS regulation.



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www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/defense-priorities-a-allocations-system-program-dpas



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