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oil supply arrangements or reports related thereto. Such material shall be provided pursuant to the conditions prescribed by the Administrator at the time of such order or subsequently. As used in this section, the term "agreement" includes proposed or draft agreements, and agreements in which the parties have tentatively concurred but have not yet signed, between or among persons and a host country.

§215.5 Pricing and volume reports.

To the extent not reported pursuant to §215.3, any person lifting for export crude oil from a country shall report to the DOE within 30 days of the date on which he receives actual notice:

(a) Any change (including changes in the timing of collection) by the host government in official selling prices, royalties, host government taxes, service fees, quality or port differentials, or any other payments made directly or indirectly for crude oil; changes in participation ratios; changes in concessionary arrangements; and

(b) Any changes in restrictions on lifting, production, or disposition.

§215.6 Notice of negotiations.

Any person conducting negotiations with a host government which may reasonably lead to the establishment of any supply arrangement subject to reporting pursuant to §215.3(a), or may reasonably have a significant effect on the terms and conditions of an arrangement subject to §215.3(a), shall notify DOE of such negotiations. Such notice shall be made no later than the later of 30 days after the effective date of this regulation or within 14 days after such negotiations meet the conditions of this section, and shall specify all persons involved and the host government affected. Notice must be in writing to the Assistant Administrator for International Energy Affairs. Where this notice pertains to negotiations to modify a supply agreement previously reported to the Department of Energy under this part, such notice shall include the agreement serial number assigned to the basic agreement.

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PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES

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AUTHORITY: Sec. 104 of the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, 89 Stat. 871; section 101(c) of the Defense Production Act of 1950 (DPA), 50 U.S.C. App. 2071(c); E.O. 12919, 59 FR 29525 (June 7, 1994); E.O. 13286, 68 FR 10619 (March 5, 2003); 15 CFR part 700; Defense Priorities and Allocations System Delegation No. 2 (August 6, 2002), as amended at 15 CFR part 700.

SOURCE: 43 FR 6212, Feb. 14, 1978, unless otherwise noted.

§216.1 Introduction.

(a) This part describes and establishes the procedures to be used by the Department of Energy (DOE) in considering and making certain findings required by section 101(c)(2)(A) of the Defense Production Act of 1950, as amended, 50 U.S.C. app. 2071(c)(2)(A) (DPA). Section 101(c) authorizes the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, materials and equipment, services, or facilities in order to maximize domestic energy supplies if the findings described in section 101(c)(2) are made. Among these findings are that such supplies of materials and equipment, services, or facilities are critical and essential to maintain or further exploration, production, refining, transportation or the conservation of energy supplies or for the construction or maintenance of energy facilities. The function of finding that supplies are critical and essential was delegated to the Secretary of Energy pursuant to E.O. 12919 (59 FR 29525, June 7, 1994) and Department of Commerce Defense Priorities and Allocations System Delegation No. 2, 15 CFR part 700.

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(b) The purpose of these regulations is to establish the procedures and criteria to be used by DOE in determining whether programs or projects maximize domestic energy supplies and whether or not supplies of materials and equipment, services, or facilities are critical and essential, as required by DPA section 101(c)(2)(A). The critical and essential finding will be made only for supplies of materials and equipment, services, or facilities related to those programs or projects determined by DOE to maximize domestic energy supplies. These regulations do not require or imply that the findings, on which the exercise of such authority is conditioned, will be made in any particular case.

(c) If DOE determines that a program or project maximizes domestic energy supplies and finds that supplies of materials and equipment, services, or facilities are critical and essential to maintain or further the exploration, production, refining, transportation or conservation of energy supplies or for the construction or maintenance of energy facilities, such determination and finding will be communicated to the Department of Commerce (DOC). If not, the applicant will be so informed. If the determination and finding described in this paragraph are made, DOC, pursuant to DPA section 101(c) and section 203 of E.O. 12919, will find whether or not: The supplies of materials and equipment, services, or facilities in question are scarce; and maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction or maintenance of energy facilities cannot be reasonably accomplished without exercising the authority specified in DPA section 101(c). If these additional two findings are made, DOC will notify DOE, and DOE will inform the applicant that it has been granted the right to use priority ratings under the Defense Priorities and Allocations System (DPAS) regulation established by the DOC, 15 CFR part 700.

[73 FR 10983, Feb. 29, 2008]

§216.2 Definitions.

As used in these regulations:

(a) *Secretary* means the Secretary of the Department of Energy.

(b) *Applicant* means a person requesting priorities or allocation assistance in connection with an energy program or project.

(c) *Application* means the written request of an applicant for assistance.

(d) *Assistance* means use of the authority vested in the President by DPA section 101(c) to implement priorities and allocation support.

(e) *DHS* means the Department of Homeland Security.

(f) *DOC* means the Department of Commerce.

(g) *DOE* means the Department of Energy.

(h) *Defense Priorities and Allocations System Coordination Office* means the Department of Energy, Office of Electricity and Energy Assurance, OE-30.

(i) *Eligible energy program or project* means a designated activity which maximizes domestic energy supplies by furthering the exploration, production, refining, transportation or conservation of energy supplies or construction or maintenance of energy facilities within the meaning of DPA section 101(c), as determined by DOE.

(j) *Facilities* means all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

(k) *Materials and equipment* means: (1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of such raw materials, commodities, articles, components, products, or items.

(l) *National Defense* means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term also includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*) and

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critical infrastructure protection and restoration.

(m) *Person* means an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any state or local government or agency thereof.

(n) *Services* include any effort that is needed for or incidental to:

(1) The development, production, processing, distribution, delivery, or use of an industrial resource, or critical technology item; or

(2) The construction of facilities.

[43 FR 6212, Feb. 14, 1978, as amended at 51 FR 8311, Mar. 11, 1986; 73 FR 10983, Feb. 29, 2008]

§216.3 Requests for assistance.

(a) Persons who believe that they perform work associated with a program or project which may qualify as an eligible energy program or project and wishing to receive assistance as authorized by DPA section 101(c)(1) may submit an application to DOE requesting DOE to determine whether a program or project maximizes domestic energy supplies and to find whether or not specific supplies of materials and equipment, services, or facilities identified in the application are critical and essential for a purpose identified in section 101(c). The application shall be sent to: U.S. Department of Energy, Attn: Office of Electricity and Energy Assurance, OE-30, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The application shall contain the following information:

(1) The name and address of the applicant and of its duly authorized representative.

(2) A description of the energy program or project for which assistance is requested and an assessment of its impact on the maximization of domestic energy supplies.

(3) The amount of energy to be produced by the program or project which is directly affected by the supplies of the materials and equipment, services, or facilities in question.

(4) A statement explaining why the materials and equipment, services, or facilities for which assistance is requested are critical and essential to

the construction or operation of the energy project or program.

(5) A detailed description of the specific supplies of materials and equipment, services, or facilities in connection with which assistance is requested, including: Components, performance data (capacity, life duration, etc.), standards, acceptable tolerances in dimensions and specifications, current inventory, present and expected rates of use, anticipated deliveries and substitution possibilities (feasibility of using other materials and equipment, services, or facilities).

(6) A detailed description of the sources of supply, including: The name of the regular supplying company or companies, other companies capable of supplying the materials and equipment, services, or facilities; location of supplying plants or plants capable of supplying the needed materials and equipment, services, or facilities; possible suppliers for identical or substitutable materials and equipment, services, or facilities and possible foreign sources of supply.

(7) A detailed description of the delivery situation, including: Normal delivery times, promised delivery time without priorities assistance, and delivery time required for expeditious fulfillment or completion of the program or project.

(8) Evidence of the applicant's unsuccessful efforts to obtain on a timely basis the materials and equipment, services, or facilities in question through normal business channels from current or other known suppliers.

(9) A detailed estimate of the delay in fulfilling or completing the energy program or project which will be caused by inability to obtain the specified materials and equipment, services, or facilities in the usual course of business.

(10) Any known conflicts with rated orders already issued pursuant to the DPA for supplies of the described materials and equipment, services, or facilities.

(b) DOE, on consultation with the DOC, may prescribe standard forms of application or letters of instruction for use by all persons seeking assistance.

(c) In addition to the information described above, DOE may from time to

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time request whatever additional information it reasonably believes is relevant to the discharge of its functions pursuant to DPA section 101(c).

[43 FR 6212, Feb. 14, 1978, as amended at 51 FR 8311, Mar. 11, 1986; 73 FR 10983, Feb. 29, 2008]

§216.4 Evaluation by DOE of applications.

(a) Based on the information provided by the applicant and other available information, DOE will:

(1) Determine whether or not the energy program or project in connection with which the application is made maximizes domestic energy supplies and should be designated an eligible energy program or project; and

(2) Find whether the described supplies of materials and equipment, services, or facilities are critical and essential to the eligible energy program or project.

(b) In determining whether the program or project referred to in the application should be designated an eligible energy program or project, DOE will consider all factors which it considers relevant including, but not limited to, the following:

(1) Quantity of energy involved;

(2) Benefits of timely energy program furtherance or project completion;

(3) Socioeconomic impact;

(4) The need for the end product for which the materials and equipment, services, or facilities are allegedly required; and

(5) Established national energy policies.

(c) In finding whether the supplies of materials and equipment, services, or facilities described in the application are critical and essential to an eligible energy program or project, DOE will consider all factors which it considers relevant including, but not limited to, the following:

(1) Availability and utility of substitute materials and equipment, services, or facilities; and

(2) Impact of the nonavailability of the specific supplies of materials and equipment, services, or facilities on the furtherance or timely completion of the approved energy program or project.

(d) Increased costs which may be associated with obtaining materials and equipment, services, or facilities without assistance shall not be considered a valid reason for finding the materials and equipment, services, or facilities to be critical and essential.

(e) After DOE has determined a program or project to be an eligible energy program or project, this determination shall be deemed made with regard to subsequent applications involving the same program or project unless and until DOE announces otherwise.

[43 FR 6212, Feb. 14, 1978, as amended at 73 FR 10984, Feb. 29, 2008]

§216.5 Notification of findings.

(a) DOE will notify DOC if it finds that supplies of materials and equipment, services, or facilities for which an applicant requested assistance are critical and essential to an eligible energy program or project, and in such cases will forward to DOC the application and whatever information or comments DOE believes appropriate. If DOE believes at any time that findings previously made may no longer be valid, it will immediately notify the DOC and the affected applicant(s) and afford such applicant(s) an opportunity to show cause why such findings should not be withdrawn.

(b) If DOC notifies DOE that DOC has found that supplies of materials and equipment, services, or facilities for which the applicant requested assistance are scarce and that the related eligible energy program or project cannot reasonably be accomplished without exercising the authority specified in DPA section 101(c)(1), DOE will notify the applicant that the applicant is authorized to place rated orders for specific materials and equipment, services, or facilities pursuant to the provisions of the DOC's DPAS regulation.

[73 FR 10984, Feb. 29, 2008]

§216.6 Petition for reconsideration.

If DOE, after evaluating an application in accordance with §216.4, does not determine that the energy program or project maximizes domestic energy

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supplies or does not find that the supplies of materials and equipment, services, or facilities described in the application are critical and essential to an eligible energy program or project, it will so notify the applicant and the applicant may petition DOE for reconsideration. If DOE concludes at any time that findings previously made are no longer valid and should be withdrawn, DOE will so notify the affected applicant(s), and such applicant(s) may petition DOE for reconsideration of the withdrawal decision. A petition is deemed accepted when received by DOE at the address stated in §216.8. DOE will consider the petition for reconsideration and either grant or deny the relief requested. Written notice of the decision and of the reasons for the decision will be provided to the applicant. There has not been an exhaustion of administrative remedies until a petition for reconsideration has been submitted and the review procedure completed by grant or denial of the relief requested. The denial of relief requested in a petition for reconsideration is a final administrative decision.

[43 FR 6212, Feb. 14, 1978, as amended at 51 FR 8312, Mar. 11, 1986; 73 FR 10984, Feb. 29, 2008]

§216.7 Conflict in priority orders.

If it appears that the use of assistance pursuant to DPA section 101(c) creates or threatens to create a conflict with priorities and allocation support provided in connection with the national defense pursuant to DPA section 101(a), DOE will work with the DOC and other claimant agencies affected by the conflict to reschedule deliveries or otherwise accommodate the competing demands. If acceptable solutions cannot be agreed upon by the claimant agencies DHS will attempt to resolve the conflicts.

[43 FR 6212, Feb. 14, 1978, as amended at 51 FR 8312, Mar. 11, 1986; 73 FR 10984, Feb. 29, 2008]

§216.8 Communications.

All written communications concerning these regulations shall be addressed to: U.S. Department of Energy, Attention: Office of Electricity and Energy Assurance, OE-30, Forrestal

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Building, 1000 Independence Avenue, SW., Washington, DC 20585.

[73 FR 10984, Feb. 29, 2008]

§216.9 Violations.

Any person who willfully furnishes false information or conceals any material fact in the course of the application process or in a petition for reconsideration is guilty of a crime, and upon conviction may be punished by fine or imprisonment or both.

PART 217—ENERGY PRIORITIES AND ALLOCATIONS SYSTEM

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