

Department of Energy

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AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061-2171; E.O. 12919, as amended, (59 FR 29525, June 7, 1994).

SOURCE: 76 FR 33619, June 9, 2011, unless otherwise noted.

Subpart A—General

§217.1 Purpose of this part.

This part provides guidance and procedures for use of the Defense Production Act section 101(a) priorities and allocations authority with respect to all forms of energy necessary or appropriate to promote the national defense. (The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations that, as a whole, form the Federal Priorities and Allocations System. Guidance and procedures for use of the Defense Production Act priorities and allocations authority with respect to other types of resources are provided for: Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; health resources; all forms of civil transportation (49 CFR Part 33); water resources; and all other materials, services, and facilities, including

construction materials in the Defense Priorities and Allocations System (DPAS) regulation (15 CFR Part 700).) Department of Energy (DOE) regulations at 10 CFR Part 216 describe and establish the procedures to be used by DOE in considering and making certain findings required by section 101(c)(2)(A) of the Defense Production Act of 1950, as amended.

§217.2 Priorities and allocations authority.

(a) Section 201 of E.O. 12919 (59 FR 29525) delegates the President's authority under section 101 of the Defense Production Act to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense to:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) Section 202 of E.O. 12919 states that the priorities and allocations authority delegated in section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(1) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(2) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

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(3) By the Secretary of Homeland Security with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

§217.3 Program eligibility.

Certain programs to promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, deploying and sustaining military forces, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include 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 critical infrastructure protection and restoration.

Subpart B—Definitions

§217.20 Definitions.

The following definitions pertain to all sections of this part:

Allocation order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity or use of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, in accordance with section 202 of E.O. 12919.

Civil transportation includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, “civil trans-

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portation” shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, “civil transportation” shall include direction, control, and coordination of civil transportation capacity regardless of ownership.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act means the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*).

Delegate Agency means a Federal government agency authorized by delegation from the Department of Energy to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel,