

**SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security**

**Defense Priorities and Allocations System
OMB Control No. 0694-0053**

A. Justification

1. Explain the circumstances that make the collection of information necessary.

Under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) (DPA), the President is given authority to require priority performance of contracts and orders and to allocate materials, services, and facilities, to promote the national defense. Similar priorities authority is found in Section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468). This authority is used to ensure the timely delivery of products, materials, and services to meet current national defense requirements. The definition of “national defense” in Section 702(14) of the DPA provides that this term includes “emergency preparedness activities” conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5195a(b)) and “critical infrastructure protection and restoration.”

Section 704 of the DPA authorizes the President to make such regulations and issue such orders as the President determines to be appropriate to carry out the provisions of the Act. Section 705 of the DPA authorizes the President to obtain information by regulation, subpoena, or otherwise as may be necessary or appropriate to the enforcement or administration of the Act and implementing regulations. The DPA also provides for criminal sanctions and certain civil remedies.

Under Section 201 of Executive Order 12919 (“National Defense Industrial Resources Preparedness”), this authority has been delegated by the President to the Secretary of Commerce for industrial resources. Within the Department of Commerce (DOC) this authority is administered by the Office of Strategic Industries and Economic Security (SIES), Bureau of Industry and Security (BIS) through the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700) for approved national defense programs.

Under Section 202 of Executive Order 12919, three Secretaries are delegated the authority to make the determination that a program is necessary or appropriate to promote the national defense: the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities; the Secretary of Energy with respect to energy production and construction, distribution, and use, and directly related activities; and the Secretary of Homeland Security with respect to essential civilian needs supporting national defense, including civil defense, continuity of government, and directly related activities. These authorities have been re-delegated within their respected departments.

DOC has re-delegated its authority to the following agencies to place, in accordance with the DPAS regulation, priority ratings on contracts or orders (DO and DX) necessary or appropriate to promote the national defense: the Department of Defense (DOD) in support of DOD programs determined by DOD as necessary or appropriate to support the national defense; the Department of Energy (DOE) in support of DOE programs determined by DOE as necessary or appropriate to maximize domestic energy supplies; the General Services Administration (GSA) in support of its general supply system for programs approved by the Secretaries of Defense, Energy, and Homeland Security; and the Department of Homeland Security (DHS) in support of (i) DHS and (ii) state, local, and tribal government programs determined by DHS as necessary or appropriate to promote the national defense. In addition, DHS may endorse and forward to DOC for appropriate action the requests of other U.S. agencies, and owners and operators of critical infrastructure to place rated orders in support of programs determined by DHS as necessary or appropriate to promote the national defense.

DOD and its industrial suppliers are the largest users of the DPAS, which is a standard clause in most DOD contracts and purchase orders (estimated at over 300,000 rated-contracts annually). In addition, other federal agencies, foreign governments, and international organizations are often approved to place priority ratings on contracts or orders, in accordance with the DPAS on a case by case basis.

The DPA was originally enacted to support our mobilization efforts for the Korean War, based on our World War II experience. Realizing that we must maintain a national defense preparedness and military readiness capability to cope with any future emergency, Congress extended the DPA in 1953 and has repeatedly extended it on average every 2-4 years since that time.

The goals of the DPAS are to (1) assure the timely availability of industrial resources to meet current national defense requirements and, (2) provide a regulatory framework for rapid industrial response in case of national emergency. In pursuing these goals, SIES attempts to minimize disruptions to normal commercial activities. The DPAS facilitates defense procurement throughout the entire chain of industrial supply, from prime contractor to the lowest tier supplier of raw materials.

Because the DPAS is a regulatory system, provisions are included to ensure that transactions under the regulation can be audited to determine compliance with it, and for criminal and civil enforcement purposes. To facilitate this audit process, every person subject to the regulation is required to retain records of such transactions for at least three years, and to produce these records for inspection on demand, pursuant to the regulation. This requirement also puts these persons on notice that certain business records must be retained and made available for audit purposes.

To ensure the system's effective and efficient operation, as well as to ensure compliance with its requirements, several customer notification requirement provisions are also included. Two such provisions are provided in section 700.13(d) as follows:

Section 700.13(d)(1) requires that a person receiving a defense rated contract or purchase order must notify the customer of acceptance or rejection of the order in writing within fifteen (15) working days after receipt of a lower priority rated (“DO”) order or within ten (10) working days for a higher priority rated (“DX”) order. Orders may be accepted either in writing or electronically. If the order is rejected, the person must give the customer the reasons for the rejection in writing.

Section 700.13(d)(2) requires that if a person has accepted a defense rated order and subsequently finds that deliveries to the customer against the order will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of the new shipment date. If the notification is given verbally, written or electronic notification must be provided within five (5) working days.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The record keeping requirement is necessary to support the administration and enforcement of the DPAS regulation. It assures the availability of records for at least 3 years of transactions that are directly related to the placement of contracts or purchase orders under the DPAS by contractors with suppliers to acquire items (materials, products, and services) needed to fill defense orders. Such records would include administrative, accounting, purchasing, scheduling, production, and shipping records, the receipt and acceptance or rejection of contractors' orders by suppliers, and any other relevant and material record to evidence the timely production and delivery of items. The requirement implements the Section 705 authority of the DPA (see #1 above).

The requirement to retain records for at least 3 years generally imposes no additional burden on a person as most business entities maintain records of transactions for at least three years both for internal operations, management, and audit purposes as well as in response to the requirements of other government agencies such as the Internal Revenue Service. However, we are unable to specifically reference any business record keeping requirements imposed by other agencies.

The customer notification requirements are also necessary to support the administration of, and compliance with, the DPAS, and to promote its effectiveness and efficiency. Because timeliness of supplier performance is a basic element of the DPAS, these requirements assure that the customer will receive notification that the supplier has in fact received the customer's defense rated contract and will begin performance against the order as required. Likewise, if the order is rejected, the customer will be able to take prompt action to either seek another supplier or work with the supplier to overcome the rejection. If the rejection can not be resolved and there is no alternate source of supply, the customer can seek Government special priorities assistance as provided in the DPAS.

These customer notification requirements, especially in view of the widespread use of electronic communications, generally imposes very little additional burden on suppliers as defense rated orders are rarely rejected and most suppliers in the ordinary course of their business will notify their customers of late delivery, especially when on-time delivery is “of the essence”.

The Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB, Department of Commerce, and specific operating unit guidelines.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The records required to be maintained by the DPAS regulation are generally identical to the records usually established and maintained in the ordinary course of a person's business, both for internal operation, management, and audit purposes and to respond to the record keeping requirements of other government agencies such as the Internal Revenue Service. Therefore, there is generally no additional record keeping burden imposed by the DPAS regulation. As most persons now have computerized access to records, the record keeping burden is further minimized.

Except for supplier rejection of a rated order, electronic customer notification is specifically authorized in the DPAS. This is because given the consequences and implications of rated order rejection, it is important that such notification be provided directly in writing by a responsible company official and not by automatic electronic response. Since very few rated orders are rejected and since most persons (including small business entities) use computers and electronic communications (e.g., e-mail) in the ordinary course of their business, the burden imposed by customer notification under the DPAS is minimal.

4. Describe efforts to identify duplication.

Each defense rated order is unique as to item, quantity, date, contractor, subcontractor, and supplier. For audit purposes, there is no other source of records available. Also, the customer notification requirements associated with acceptance, rejection or performance against these orders are also unique and there is no other available source of this information.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection does not impact small businesses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Without the record keeping and customer notification requirements, the ability to successfully administer the DPAS, ensure compliance with its provisions, and ensure its effectiveness and efficiency in meeting its stated goals, would be greatly diminished with a substantial negative impact on industry usage of the DPAS and compliance with its provisions at all levels.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The DPAS customer notification requirement is also triggered by a person's receipt of a rated order or when it becomes known that the person will be unable to meet the required delivery date or dates set forth in the rated order. A copy of the customer notification is not sent to the Government. This written notification may be required less than 30 days after receipt of an order or when it is known that an order delivery date(s) cannot be met.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The notice requesting public comment was published in the Federal Register on March 15, 2010, pp. 12173-12174. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There is no decision to provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Confidentiality of any information obtained during an audit is safeguarded under Section 705(d) of the DPA (50 U.S.C. App. 2155).

This section provides a criminal penalty for any person who willfully publishes or discloses information collected under the authority of the Act which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing the information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

BURDEN HOURS -- The number of defense rated orders continuously varies and it is not possible to estimate the quantity of such orders received and in process throughout the U.S. defense industrial base during a particular time period. However, it has been roughly and conservatively estimated by the Department of Defense that there are at least 700,000 defense rated orders received by a respondent universe of at least 18,000 entities in any one year (including an estimated 300,000 prime contracts and 400,000 subcontracts and purchase orders). Although the record keeping burden imposed by the regulations is minimal, if we assume that each entity spends one additional minute to establish and maintain a special record for each defense rated order received, a total annual burden of 11,667 hours is suggested for this *record keeping* activity.

Every rated order received must be accepted or rejected as required by the DPAS. Thus, if we assume that of the total number of defense rated orders received (700,000), approximately .05% or 350 are rejected with 699,650 accepted and, if each entity spends up to 5 seconds to accept the order and up to 15 minutes to reject the order, a total hourly annual burden of approximately 1,060 hours is suggested for this *acceptance or rejection* activity.

Furthermore, if we also assume that of the total number of rated orders received, deliveries on 1% or 7,000 of these orders will be delayed and will require that the customer be notified, and each entity spends up to 15 minutes to prepare and send the notification, a total hourly annual burden of 1,750 hours is suggested for this *notification* activity.

It should be noted that many respondents (primarily smaller entities) receive only a few defense rated orders while defense rated orders may be the principal business, or the only business, for other respondents. In addition, most entities, including small entities, have access to computerized record keeping and electronic communication and would use this capability to maintain records in the ordinary course of business and to communicate acceptance of an order or to notify the customer of delayed delivery.

The following exhibit summarizes the burden hours:

700,000 create order record x 1 minute =	11,667.0 hrs
699,650 orders x 5 seconds =	972.0 hrs
350 orders x 15 minutes =	87.5 hrs
7,000 orders x 15 minutes =	<u>1,750.0 hrs</u>
	14,476.5 hrs

Rounded to the nearest whole hour, the estimated total annual public burden is **14,477 hours**.

ANNUALIZED COST TO RESPONDENTS

Record Keeping -- The annual record keeping cost to the public is \$233,340. This is based on the annual receipt of 700,000 rated orders by the respondent universe at one minute of extra time per respondent to make a record of such receipt x \$20.00/hour. Please note that this expense amounts to only 33 cents per order.

Customer Notification -- The annual customer notification cost to the public is \$56,190. This is based on 699,650 accepted rated orders at 5 seconds per response x \$20.00/hr; 350 rejected orders at 15 minutes per response x \$20.00/hr; and 7,000 delivery delay notifications at 15 minutes per response x \$20.00/hr:

699,650 orders x 5 seconds =	972.0 hrs
350 orders x 15 minutes =	87.5 hrs
7,000 orders x 15 minutes =	<u>1,750.0 hrs</u>
	2,809.5 hrs

$$2,810 \text{ hours} \times \$20.00/\text{hr} = \underline{\$56,200}$$

Total annualized cost to respondents of the burden imposed by the DPAS record keeping and customer notification requirements is \$289,540.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Not Applicable.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Federal Government associated with the record keeping requirement.

15. Explain the reasons for any program changes or adjustments.

There are two adjustments associated with this submission: (1) an increase in the number of responses has doubled (707,000 to 1,407,000) as a result of dividing the single IC into multiple IC's which will account for the issuance and response to a single defense rated order as two responses; and (2) a decrease in the cost burden (-\$290,000) to remove the labor cost mistakenly recorded in the previous submission.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not Applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.