

**Supporting Statement
Energy Priorities and Allocations System
OMB Control Number 1910-NEW**

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of the proposed information collection for the Energy Priorities and Allocations System regulations. The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, "Instructions for Completing OMB Form 83-I."

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

Under 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 and national security emergency preparedness program requirements. It may also be used to support civil emergency preparedness (e.g., Homeland Security) under Section 602 of the Robert T. Stafford Disaster Relief and emergency Assistance Act (42 U.S.C. 5195).

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.

This authority has been delegated by the President to the Secretary of Energy for energy resources and will be administered by the Office of Electricity Delivery and Energy Reliability (Office of Electricity) through the proposed Energy Priorities and Allocations System (EPAS) regulation (10 CFR 217).

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

The Form DOE-999 described in section 217.40(c) will be used to allow persons to request special priorities assistance from DOE to fill a rated order issued pursuant to the DPA and DOE's implementing regulations.

Because the EPAS is a regulatory system, provisions are included to ensure that transactions under the regulation can be audited to determine compliance, 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 217.33(d) as follows:

Section 217.33(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 217.33(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. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection

The record keeping requirement is necessary to support the administration and enforcement of the EPAS 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 EPAS 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 EPAS, and to promote its effectiveness and efficiency. Because timeliness of supplier performance is a basic element of the EPAS, 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 EPAS.

Form DOE-999 is designed to allow manufacturers to request special priorities assistance for the performance of a rated order(s) issued pursuant to the Defense Production Act and DOE's proposed implementing regulations – 10 CFR Part 217, Energy Priorities and Allocations System.

DOE asks for the following information on the Form DOE-999 to ensure that the Defense Production Act and associated proposed regulatory requirements are satisfied and that DOE can respond appropriately to the request for special priorities assistance.

- 1) Name and complete address of Applicant, and appropriate contact information
- 2) If Applicant is not the end-user Government agency, the name and complete address of Applicant's customer.
- 3) If Applicant is not end-user Government agency, item(s) to be delivered by Applicant under its customer's contract or purchase order though the use of the item(s) specified. If known, the Government program and end-item for which these items are required. If Applicant is end-user Government agency and specified item(s) are not end-items, the end-item for which the specified item(s) are required.
- 4) Item(s) (including service) for which Applicant requests assistance, including the quantity (pieces/units), description (with identifying information such as model or part number), and dollar value of each quantity listed.

The 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, which complies with all applicable information quality guidelines, i.e., OMB, Department of Energy, 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The records required to be maintained by the EPAS 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 EPAS 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 EPAS. 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 defense 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 EPAS is minimal.

DOE based the Form DOE-999 on the existing Form BIS-999 used by the Department of Commerce (DOC) for special priorities assistance requests made pursuant to DOC's Defense Priorities and Allocations System regulations. DOE will allow electronic submission of Form DOE-999 as a .pdf document to reduce the burden on applicants.

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 impacts small businesses or other small entities, describe any methods used to minimize burden.

This collection of information does not impact small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without the record keeping and customer notification requirements, our ability to successfully administer the EPAS, 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 EPAS and compliance with its provisions at all levels, from the lowest tier suppliers to the prime contractors. However, with the widespread use of

computerized record keeping and electronic communications throughout industry, especially by small business concerns, the burden of record keeping and customer notification as required by the EPAS is minimized. Also see items #1 and #2 above.

7. **Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The data are being collected in accordance with all OMB guidelines set forth in 5 C.F.R. 1320.5 except as specifically explained below:

DOE notes that the EPAS record keeping requirement is triggered by a person's receipt of a defense rated order. Without this requirement, we would not be able to effectively and efficiently determine compliance by a person with, or prosecute a person under, the DPA, the Selective Service Act, the EPAS regulation, or official actions taken by the Office of Electricity under the DPAS. Nor would we be able to administer properly our delegated responsibilities under these statutes.

The EPAS customer notification requirement is also triggered by a person's receipt of a defense 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. Both the person sending the notification and the person receiving the notification must retain a file copy as an ordinary business record for at least three (3) years as required by section 700.91 of the EPAS.

We understand from DOC that the record keeping and customer notification requirements have been periodically reviewed since DOC's DPAS regulation was first published as a proposed rule in 1981. This was in addition to DOC solicitation of public comment on all aspects of the regulation, including the record keeping and customer notification requirements. In 1983, these requirements were again reviewed as part of a comprehensive review of all of DOC's data collection activities to ensure that the requirements were at the minimum necessary to properly administer our national security emergency preparedness responsibilities. While many

commentors responded concerning various aspects of the regulation, no commentor objected to these requirements. Again in 1988, 1993, and 1998, further DOC reviews of its DPAS regulation and its associated information collection, record keeping, and customer notification requirements supported the conclusion that these requirements are at the minimum and generally impose very little additional burden on a business entity than is otherwise necessary for the proper conduct of its operations in the ordinary course of its business.

The record keeping and customer notification requirements have been a part of the priorities and allocations regulations since the early 1950's to support the Government's priorities and allocations and defense preparedness activities. Industry has been consulted periodically concerning these provisions since their inception and has been consistently supportive. Furthermore, a three (3) year record retention requirement is consistent with standard business record keeping practices and with other Government imposed record keeping requirements (e.g., for income and other tax purposes). A reduction of this time would make it much more difficult to us to ensure EPAS compliance without any corresponding benefit to business entities who receive priority rated orders under the EPAS.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE 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 report.

DOE will publish a proposed Energy Priorities and Allocations system regulation. The Federal Register Notice will provide the public an opportunity to comment on the proposed three-year information collection, including Form DOE-999 and the other proposed information collection and recordkeeping requirements.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There are no provisions for payments to respondents.

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

Section 705(d) of the Defense Production Act provides that information obtained under this section which DOE deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless DOE determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to the Department of Energy in connection with the enforcement or administration of the Defense Production Act, this

regulation, or an official action, is deemed to be confidential under section 705(d) of the Defense Production Act and shall be handled in accordance with applicable federal law.

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. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information., the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature in these data collections.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

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. 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. Because DOE has not yet used these existing authorities under the Defense Production Act, the burden hours for *recordkeeping* activities conducted pursuant to the EPAS regulations are expected to be much smaller.

Every rated order received must be accepted or rejected as required by the EPAS. For DOC's DPAS activities, if it is assumed 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 1060 hours is suggested for this *acceptance or rejection* activity. Because DOE has not yet used these existing authorities under the Defense Production Act, the burden hours for the *acceptance or rejection* activities conducted pursuant to the EPAS regulations are expected to be much smaller.

Furthermore, for DOC's DPAS activities, if it is also assumed that of the total number of rated orders received, deliveries on 1% or 7000 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 1750 hours is suggested for this *notification* activity. Because DOE has not yet used these existing authorities under the Defense Production Act, the burden hours for the *notification* activities conducted pursuant to the EPAS regulations are expected to be much smaller.

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 for DOC's DPAS activities:

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. Because DOE has not yet used these existing authorities under the Defense Production Act, the burden hours for all of these activities conducted pursuant to the EPAS regulations are expected to be much smaller.

ANNUALIZED COST TO RESPONDENTS

Record Keeping -- The annual record keeping cost to the public for DOC's DPAS activities 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 hours x \$20.00/hr =	<u>\$56,200</u>

In short, the estimate of hour burden of the information collection is as follows:

Total number of unduplicated respondents:

DOC estimate for DPAS 18,000; DOE estimate approaching 0 (DOE has to date not used these existing DPA authorities, and believes their use for EPAS is likely to be very rare.)

Reports filed per person: $700,000/18,000 = 39$. DOE estimate approaching 0 (DOE has to date not used these existing DPA authorities, and believes their use for EPAS is likely to be very rare.)

Total annual responses:

DOC estimate for DPAS 700,000; DOE estimate approaching 0 (DOE has to date not used these existing DPA authorities, and believes their use for EPAS is likely to be very rare.)

Total annual burden hours: DOC estimate for DPAS 14,477; DOE estimate approaching 0 (DOE has to date not used these existing DPA authorities, and believes their use EPAS is likely to be very rare.)

Average Burden Per Collection: 1-15 minutes
 Per Applicants: 1-15 minutes x 39 reports per person

The estimate of annual cost for the information collection is approaching \$0. (DOE has to date not used these existing DPA authorities, and believes their use for EPAS is likely to be very rare.)

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

Total annualized cost to respondents of the burden imposed by the DPAS record keeping and customer notification requirements is \$289,540. Because DOE has not yet used these existing authorities under the Defense Production Act, the annualized cost to the public for these activities conducted pursuant to the EPAS regulations are expected to be much smaller.

There are no start-up costs to respondents associated with this collection of information. However, as stated in Item 13, there are \$289,540 of annualized costs associated with the record keeping and customer notification requirements in DOC's DPAS regulations. Because DOE has not yet used these existing authorities under the Defense Production Act, the annualized cost to the public for these activities conducted pursuant to the EPAS regulations are expected to be much smaller.

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 reported in Items 13 (or 14) of OMB Form 83-I.

This is a new information collection, required by the publication of regulations pursuant to the DPA. These regulations were developed in consultation with other agencies delegated similar authority under the DPA and are consistent with similar regulations being promulgated by these agencies.

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

The information collected and retained by respondents is generally proprietary in nature and will not be published.

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.

The expiration date will be included on the forms.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

There are no exceptions to the Certification Statement.