

## VI. Regulatory Analysis

A regulatory analysis has not been prepared for this rule because it applies to the delegation of authority within the NRC and does not involve any provisions that would impose any economic burdens on licensees or the public.

## VII. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

## VIII. Congressional Review Act

Under the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 2.

### PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND FOR ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134,

2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.307, the heading is amended and a new paragraph (c) is added to read as follows:

**§ 2.307 Extension and reduction of time limits; delegated authority to order use of procedures for access by potential parties to certain sensitive unclassified information.**

\* \* \* \* \*

(c) In circumstances where, in order to meet Commission requirements for intervention, potential parties may deem it necessary to obtain access to safeguards information (as defined in § 73.2 of this chapter) or to sensitive unclassified non-safeguards information, the Secretary is delegated authority to issue orders establishing procedures and timelines for submitting and resolving requests for this information.

Dated at Rockville, Maryland, this 21st day of February 2008.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

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## DEPARTMENT OF ENERGY

### 10 CFR Part 216

### 48 CFR Parts 911 and 952

RIN 1991–AB69

### Defense Priorities and Allocations System

**AGENCY:** Department of Energy.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Energy (DOE) today is issuing a direct final rule to update the DOE regulations which implement DOE's delegated authority under section 101(c) of the Defense Production Act of 1950 (DPA). Section 101(c) provides authority to the President of the United States (President) to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, or facilities, in order to maximize domestic energy supplies, if the President makes certain findings. The President's authority under section 101(c) was delegated to the Secretary of Commerce and the Secretary of Energy. This final rule makes a number of changes to conform to a 1991 amendment to the DPA which broadens the scope of authority in section 101(c). This final rule also makes conforming changes to Department of Energy Acquisition Regulation (DEAR).

**DATES:** This direct final rule is effective April 29, 2008, unless adverse or critical comments are received by March 31, 2008. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** This direct final rulemaking is available and comments may be submitted online at <http://www.Regulations.gov>. Comments may be submitted by e-mail to [Mike.Soboroff@hq.doe.gov](mailto:Mike.Soboroff@hq.doe.gov). Comments may be mailed to: Mike Soboroff, U.S. Department of Energy, Office of Electricity and Energy Assurance, OE–30, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Mike Soboroff at (202) 586–4936 or via e-mail at [Mike.Soboroff@hq.doe.gov](mailto:Mike.Soboroff@hq.doe.gov).

### SUPPLEMENTARY INFORMATION:

I. Discussion

II. Final Action

III. Procedural Requirements

A. Review Under Executive Order 12866

B. Review Under Executive Order 12988

C. Review Under the Regulatory Flexibility Act

D. Review Under the Paperwork Reduction Act

- E. Review Under the National Environmental Policy Act
- F. Review Under Executive Order 13132
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 13211
- J. Review Under the Treasury and General Government Appropriations Act, 2001
- K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
- L. Approval by the Office of the Secretary of Energy

## I. Discussion

The purpose of this final rule is to update DOE regulations at 10 CFR part 216, which implement DOE's delegated authority under section 101(c) of the DPA, to reflect a 1991 amendment to that section. Section 101(c) provides authority to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, and facilities in order to maximize domestic energy supplies, if DOE and the Department of Commerce make certain findings.

As originally enacted in 1975, section 101(c)(1) authorized the President to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment, in order to maximize domestic energy supplies if the President made the following findings described in section 101(c)(3):

(A) Such supplies are scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities; and

(B) Maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in subsection (c)(1).

Executive Order (E.O.) 11912 (April 13, 1976) directed that DOE's predecessor, the Federal Energy Administration, be delegated the function of making the "critical and essential" finding and that the Department of Commerce be delegated the function of making the findings that supplies are scarce and that it is necessary to exercise the section 101(c) authority.

The Defense Production Act Extension and Amendments of 1991, Pub. L. 102-99, amended section 101 to broaden its scope in section 101(a)(2) by substituting "materials, services, and

facilities" for "materials and facilities" and in section 101(c)(1) by substituting "materials, equipment, and services" for "supplies of materials and equipment." Thereafter, the President issued E.O. 12919 (June 3, 1994), which revoked the relevant provisions of E.O. 11912. In section 203 of E.O. 12919, the President delegated to the Secretary of Commerce the section 101(c) authority and directed the Secretary of Commerce to re-delegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials and equipment, services, and facilities are critical and essential. The Secretary of Commerce retained the authority to make the finding that the materials and equipment, services, or facilities are scarce, and to make the finding that maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority in section 101(c)(1).

DOE's regulations at 10 CFR part 216, which were promulgated in 1978, established the procedures to be used by DOE in considering and making the section 101(c) findings assigned to DOE under E.O. 11912. Today's direct final rule amends part 216 to reflect the broader scope of the Defense Production Act Extension and Amendments of 1991, Public Law 102-99 and E.O. 12919. Today's rule also adds definitions of "services," "national defense," "facilities," and "person" and amends the definition of "materials and equipment" in § 216.2. In addition, DOE is amending DEAR parts 911 and 952 to inform DOE contracting officers to include in contracts a clause that informs DOE contractors of the Defense Priorities and Allocations System (DPAS) authority.

## II. Final Action

DOE is publishing this direct final rule without prior proposal because DOE views these amendments as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse comments are filed, DOE has prepared a notice of proposed rulemaking (NPR) proposing the same amendments. The NPR is a separate document published today in the **Federal Register**. The direct final rule will be effective April 29, 2008, unless significant adverse comments are received by March 31, 2008. If DOE receives significant adverse comments, the amendments will be withdrawn before the effective date. In the case of withdrawal of this

action, the withdrawal will be announced by a subsequent notice published in the **Federal Register**. Relevant public comments will then be addressed in a separate final rule based on the proposed rule that is also issued today. DOE will not implement a second comment period on this action. Any party interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective April 29, 2008. DOE will publish a notice in the **Federal Register** to advise the public if no significant adverse comments are received.

## III. Procedural Requirements

### A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under E.O. 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under the E.O. by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the

required review and determined that, to the extent permitted by law, this direct final rule meets the relevant standards of E.O. 12988.

#### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the DOE Office of General Counsel's Web site: <http://www.gc.doe.gov>. DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's direct final rule makes non-discretionary, conforming changes to DOE regulations required by the 1991 amendment to the DPA. It also makes minor changes that will not have any economic impact beyond that of the existing regulations. On this basis, DOE certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### *D. Review Under the Paperwork Reduction Act*

This direct final rule contains no new collection of information requiring OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *E. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–08), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, DOE has determined that today's regulatory action is an amendment of an

existing regulation that does not change the environmental effect of the regulation being amended (Categorical Exclusion A5). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

#### *F. Review Under Executive Order 13132*

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to state, local or tribal governments, or to the private sector. This rulemaking does not impose a Federal mandate on state, local or tribal governments or on the private sector.

#### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policy Assessment.

#### *I. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined

as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *L. Approval by the Office of the Secretary of Energy*

The Office of the Secretary of Energy has approved issuance of this direct final rule.

#### **List of Subjects**

##### *10 CFR Part 216*

Energy, Government contracts, Reporting and recordkeeping requirements, Strategic and critical materials.

##### *48 CFR Part 911*

Government procurement.

## 48 CFR Part 952

Government procurement, Reporting and recordkeeping requirements.

Issued in Washington, DC, on February 20, 2008.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management, Department of Energy.*

**William N. Bryan,**

*Deputy Assistant Secretary, Infrastructure Security and Energy Restoration, Department of Energy.*

**David O. Boyd,**

*Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.*

■ For the reasons set forth in the preamble, DOE amends Chapter II of Title 10 and Chapter 9 of Title 48 of the Code of Federal Regulations (CFR) as set forth below:

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

■ 1. The authority citation for part 216 is revised to read as follows:

**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.

■ 2. Section 216.1 is revised to read as follows:

**§ 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.

(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.

■ 3. Section 216.2 is amended by revising paragraphs (e) through (j) and adding paragraphs (k) through (n) to read as follows:

**§ 216.2 Definitions.**

\* \* \* \* \*

(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 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.

■ 4. Section 216.3, paragraph (a) is revised to read as follows:

**§ 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.

\* \* \* \* \*  
■ 5. In § 216.4, paragraph (a), paragraph (b)(4), and paragraphs (c) and (d) are revised to read as follows:

**§ 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) \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 6. Section 216.5 is revised to read as follows:

**§ 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.

**§ 216.6 [Amended]**

■ 7. Section 216.6 is amended:  
■ a. In the first sentence by adding “, services, or facilities” after “materials and equipment”; and  
■ b. At the beginning of the third sentence by removing the words “Such a” and adding the word “A”.

**§ 216.7 [Amended]**

■ 8. Section 216.7 is amended:  
■ a. By removing the word “such” in both sentences wherever it appears and adding in its place the word “the”;  
■ b. By removing the words “in an attempt” from the first sentence; and  
■ c. By removing the words “the FEMA” and adding in its place “DHS” in the second sentence.  
■ d. By removing the words “will resolve” and adding in its place “will attempt to resolve” in the second sentence.

■ 9. Section 216.8 is revised to read as follows:

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

#### Chapter 9 of Title 48

■ 10. The authority citation for parts 911 and 952 is revised to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

#### PART 911—DESCRIBING AGENCY NEEDS

##### 911.600 [Amended]

■ 11. Section 911.600 is amended by removing the words “and those energy programs which maximize domestic energy supplies”.

##### 911.602 [Amended]

■ 12. Section 911.602 is amended by removing paragraph (d).

##### 911.604 [Amended]

■ 13. Section 911.604 is amended by removing paragraphs (d) and (e).

#### PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Section 952.211–70 is revised to read as follows:

##### 952.211–70 Priorities and allocations for energy programs (solicitations).

As prescribed in 911.604(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs.

##### Priorities and Allocations (Atomic Energy) (APR 2008)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [ ] DO-Rating; [ ] DX Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) (Contracting officer check appropriate box.) [End of Clause]

■ 15. Section 952.211–71 is revised to read as follows:

##### 952.211–71 Priorities and allocations for energy programs (contracts).

As prescribed in 911.604(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended.

##### Priorities and Allocations (Atomic Energy) (APR 2008)

The Contractor shall follow the provisions of Defense Priorities and Allocations System

(DPAS) regulation (15 CFR part 700) in obtaining materials (including equipment), services, or facilities needed to fill this contract.

[End of Clause]

[FR Doc. E8–3773 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

#### DEPARTMENT OF THE TREASURY

##### Office of Thrift Supervision

##### 12 CFR Part 585

[OTS–2007–0008]

RIN 1550–AC14

#### Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

**AGENCY:** Office of Thrift Supervision (OTS) Treasury.

**ACTION:** Final rule.

**SUMMARY:** OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is June 1, 2008.

**DATES:** *Effective Date:* The final rule is effective on February 29, 2008.

##### FOR FURTHER INFORMATION CONTACT:

Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, or Karen Osterloh, Special Counsel, Regulations and Legislation, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from

holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption is set to expire on March 1, 2008, unless a case-by-case exemption is filed prior to that expiration date.<sup>1</sup>

OTS is extending the expiration date of the temporary exemption to June 1, 2008. This extension will avoid needless disruptions of SLHC operations while OTS reviews the public comments and develops a final rule addressing these comments. OTS has concluded that this extension of the exemption of the exemption is consistent with the purposes of section 19(3) of the FDIA.

#### Regulatory Findings

##### Notice and Comment and Effective Date

For the reasons set out in the interim final rule,<sup>2</sup> OTS has concluded that: notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

##### Regulatory Flexibility Act

For the reasons stated in the interim final rule,<sup>3</sup> OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

<sup>1</sup> This temporary exemption originally was scheduled to expire on September 5, 2007. OTS extended the expiration date to March 1, 2008. 72 FR 50644 (Sept. 4, 2008).

<sup>2</sup> 72 FR at 25953.

<sup>3</sup> 72 FR at 25953–54.