

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
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July 11, 2013

Ms. Linda Neilson
Deputy Director, Defense Acquisition Regulation System
OUSD (AT&L) DPAP/DARS
4800 Mark Center Drive
Suite 15D07
Alexandria, Virginia 22350

Re: **DFARS Case 2012–D055**
CODSIA Case 04-13

Dear Ms. Neilson:

On behalf of the Council of Defense and Space Industry Associations (CODSIA)¹, we applaud the Department's efforts to coordinate a public meeting on the subject DFARS case. As follow-up to the meeting, and considering the scope of the rulemaking, CODSIA believes that further effort by both industry and the Department beyond the standard comment collection and analysis process will help achieve the common objective of establishing a manageable and affordable implementation of Section 818 and achievement of its goal of enhanced detection and avoidance of counterfeit electronic parts.

As noted throughout the public meeting, implementing Section 818 is a very complex undertaking which affects many sectors of the defense industry as well as commercial sources that provide necessary technologies. All responsible parties have an interest in protecting against counterfeit parts – but we also share the objective of acting responsibly to minimize costs and avoid adverse impacts to the defense and commercial supply chains. The complexity of this subject area means that rulemaking could have consequences that impact global manufacturing and affect bilateral and multinational trade relationships between the US and other nations. Imprudent implementation could have very adverse, costly and long-term implications to the makeup of the US industrial base. We see these conditions as indicating the DAR Council should take a cautious, informed approach.

¹ CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of six associations – the Aerospace Industries Association (AIA), the American Council of Engineering Companies (ACEC), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), TechAmerica, and the Chamber of Commerce of the United States. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

At the meeting itself, we heard several major themes repeated through industry slides and oral presentations:

1. Complexity of the subject matter;
2. Continuing uncertainty as to critical definitions and terms of art, despite continuing efforts of many interested concerns;
3. Absence of consensus inside and outside the government as to the best regulatory strategy and oversight roles and responsibilities;
4. Recognition of potential cost consequences and support for risk-based approaches not now reflected in the regulations;
5. Industry concerns that 818 rules should be finalized after review of other pending regulatory proposals, such as new reporting and quality assurance requirements;
6. Incomplete communication between industry and the Department leading to misunderstanding or gaps in private sector understanding plan; and
7. Continuing need expressed by industry for better guidance on selection of trusted suppliers when parts are not available from original sources.

Many industry representatives expressed concern that more time is needed to better study the problem and to develop an approach to counterfeit prevention (and reporting) rules that will have lower-risk and lower cost. From these comments, and our perception that there is no current industry-government consensus, we urge modification to the the 818 rules promulgation process to include a framework for bi-lateral regulatory dialogue and coherent interaction between the government and the impacted contractors and specialists.

Several presenters referenced previous and ongoing governmental efforts to shape a regulatory framework where the consequences of the rules could fundamentally alter the business landscape between federal agencies and industry. Most recently, this is being done by the CAS Board to help develop changes to CAS 413 and treatment of pension costs. Such a process also was used to implement portions of the Federal Acquisition Streamlining Act (FASA), in the mid-1990s. A unique policy-making process, for FASA, relied on the creation of integrated product teams (IPT) involving all stakeholders. The resulting final rules were understood and largely supported by industry and the general public.

There are other examples of the use of an integrated public-private sector regulatory framework to address especially challenging and important regulatory initiatives. Such a process is being used to implement a national cyber-security framework mandated by E.O.13636 (managed by OMB, the Departments of Commerce, Homeland Security and other executive agencies). GSA is developing its next generation OASIS acquisition vehicle using an outreach program that is being conducted over a two year period. The

ongoing effort, among Defense, Commerce and State, to reform the export control process is another model of private-public sector cooperation.

Congress has expressed concern that DoD “avoid costly or ineffectual missteps in mitigating the threat of counterfeit electronic parts” (House Report, H.R 4310) and has emphasized “consistent and meaningful dialogue” with industry. In keeping with these observations, CODSIA recommends the following steps to the DAR Council:

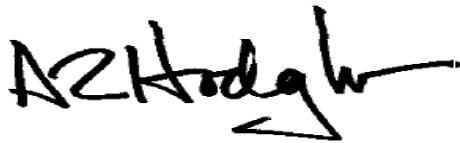
1. Identify key technical issues, acquisition functions and operational objectives to be achieved by the rulemaking and set up separate teams for integrated private-public (IPT) pursuit of these issues.
2. Establish a new schedule for the promulgation process for DFARS Case 2012-D055 to integrate a series of public meetings and working technical/IPT sessions, starting immediately.
3. Coordinate the technical and IPT teams formed for 2012-D055 with other, related rulemaking and policymaking activities of the DAR and FAR Council, e.g., FAR Case 2013-002 (expanded reporting of nonconforming supplies).
4. Initiate the integrated promulgation process through meetings led by the Chair of the DAR Council and involving key industry representatives and the public, as needed.
5. Schedule and conduct meetings as considered needed to address the key regulatory and policy topics, working to an objective of consensus and with a goal date for completion;
6. Both DoD and other involved executive agencies (IPEC, DOJ, DHS), private sector trade associations, company representatives and the public could ideally nominate 1-2 individuals with deep subject matter knowledge to participate on their behalf in multi-lateral discussions designed to result in a jointly developed regulatory framework;
7. Nominated SME and other public attendees can be technical, legal, policy or operational depending on the topic at hand for that particular meeting agenda and as determined during the orientation process;
8. After the discussion period and all stakeholder/IPT meetings conclude, the DAR Council could proceed with the next stages of the promulgation, including publishing for public comment the integrated product of the regulatory framework process.

Based on previous experience with other major acquisition rulemakings, and considering the examples mentioned above, CODSIA encourages the DAR Council to support this alternative promulgation process. CODSIA would support this initiative in conducting outreach and hosting interactive substantive policy meetings.

We welcome the opportunity to discuss this proposal further and to respond to any questions the Council may have. Trey Hodgkins of TechAmerica serves as CODSIA’s

project lead on this case and he can be reached at 703-284-5310 or at thodgkins@techamerica.org. Bettie McCarthy, CODSIA's administrative officer, can serve as an additional point of contact and can be reached at codsia@pscouncil.org or at (703) 875-8059.

Sincerely,



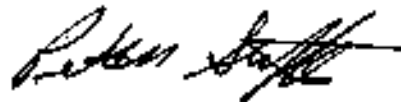
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