

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
4401 Wilson Boulevard, Suite 1110
Arlington, Virginia 22203
703-875-8059

July 12, 2013

U.S. Department of Energy
Office of Acquisition and Project Management
MA-611
1000 Independence Avenue S.W.
Washington, DC 20585

Attn: Lawrence Butler

Ref: Export Control and RIN 1991-AB99
CODSIA Case 05-2013

Via Email: DEARrulemaking@hq.doe.gov
Lawrence.butler@hq.doe.gov

Dear Mr. Butler:

On behalf of the Council of Defense and Space Industry Associations (CODSIA),¹ this letter requests that the Department of Energy (DOE) extend, by an additional 30 days, to August 12, 2013, the comment period for DOE's proposed amendment to the Department of Energy Acquisition Regulation (DEAR) adding export control requirements to DOE contracts. *See* 78 Fed. Reg. 35,195 (June 12, 2013).² Comments presently are due on July 12, 2013.

DOE is proposing to add a new DEAR subpart 925.71—Export Controls, and a new clause, Compliance With Export Control Laws, Regulations And Directives (XXX 20XX), for all DOE solicitations and contracts that may involve the export of items, including but not limited to unclassified information, materials, technology, equipment, or software. Similar provisions would apply to management and operating contracts. Like the 2010 Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7008—Export-Controlled Items, the new DEAR clause would require that DOE contractors comply with all applicable export control laws, regulations, and directives, although the list would be more extensive to cover authorities unique to DOE. However, in our preliminary view, the DEAR clause has more far-reaching requirements than the DFARS clause.

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.

² Available at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-12/pdf/2013-13798.pdf>

Extending the comment period for this proposed rule would allow us additional opportunity to more carefully analyze the proposed rule and coordinate our comments on the proposed rule for the following reasons:

1. The proposed DEAR rule is similar in its basic respect to the rule that the Department of Defense (DoD) proposed in 2005. *See* 70 Fed. Reg. 39,976 (July 12, 2005). Both proposed rules concern contractor compliance with export control laws. The comment period for the proposed DFARS rule was extended from 60 to 90 days. CODSIA submitted extensive comments on that DFARS rule.³
2. There is no urgency in this rulemaking since DOE is responding to old (2004 and 2007) IG reports and a government-wide report that is two and one-half years old (February 2011).
3. The proposed rule would have a significant effect on contractors, as well as on the relationship between contractors and DOE, as the notice itself indicates. The rule would add a variety of notice and notification requirements relating to export controls.

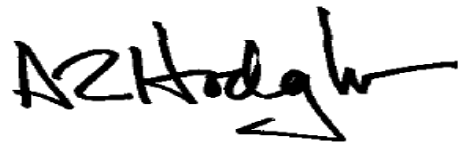
In our preliminary review, it appears that the scope of the proposed rule exceeds the stated purpose of the rule, which is “to amend the DEAR *for consistency with a 2010 amendment to the Department of Defense Acquisition Regulations (DFARS)* (DFARS Case 2004-D010, 75 FR 18030, Apr. 8, 2010).” (Emphasis added). The proposed DEAR rule is not consistent with the DFARS. The proposed DEAR rule is broader and would impose additional burdens and risks on DOE contractors and DOE procurement personnel.

Thank you for your attention to this request. If you have any questions or need any additional information, please do not hesitate to contact Alan Chvotkin, Executive Vice President and Counsel of the Professional Services Council, who serves as our point of contact in this matter or Bettie McCarthy, CODSIA's Administrative Officer. Alan can be reached at chvotkin@pscouncil.org or at (703) 875-8059. Bettie can be reached at codsia@pscouncil.org or at (703) 875-8059.

Sincerely,



Alan Chvotkin
Executive Vice President & Counsel
Professional Services Council



A.R. “Trey” Hodgkins, III
Senior Vice President, Global Public
Sector
TechAmerica

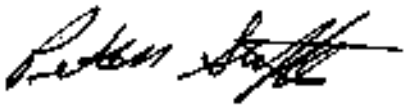
³ CODSIA's 2006 comments on the DFARS rule are available from the CODSIA administrative officer.



Christian Marrone
Vice President, National Security &
Acquisition Policy
Aerospace Industries Association



R. Bruce Josten
Executive Vice President, Government
Affairs
U.S. Chamber of Commerce



Peter Steffes
Vice President, Government Policy
National Defense Industrial Association