

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
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February 21, 2012

Mr. Richard T. Ginman
Director, Defense Procurement and Acquisition Policy
U.S. Department of Defense
3060 Defense Pentagon, Room 3C152
Washington, D. C. 20301-3060

Mr. Alan F. Estevez
Assistant Secretary for Logistics and Materiel Readiness (OUSD (AT&L))
U.S. Department of Defense
3500 Defense Pentagon, Room 1E518
Washington, D. C. 20301-3060

Subject: Implementation of Section 818, Detection and Avoidance of Counterfeit Electronic Parts, National Defense Authorization Act (NDAA) for Fiscal Year 2012

Dear Messers Ginman and Estevez:

On behalf of the Council of Defense and Space Industry Associations (CODSIA)¹ member associations, we write in anticipation of regulations to implement Section 818 of the FY12 NDAA enacted December 31, 2011 regarding the detection and avoidance (D/A) of counterfeit electronic parts. CODSIA believes that Section 818 introduces many positive steps towards curbing the penetration of counterfeit electronic parts into DoD products and supports the effort to address gaps in the DOD supply chain caused by counterfeit parts.

While industry applauds many of the policy steps taken in the bill, we also strongly support and recommend the collaborative development by the Department and its contractors of a governing regulatory framework and believe that such an effort will result in collectively achieving the goal of eliminating counterfeit electronic parts from the supply chain, make it easier for DOD and industry to implement, and incentivize industry's counterfeit detection and avoidance efforts. Considering the timeframe for creating the regulations, those collaborative efforts should begin immediately or as early as possible in the implementation cycle to have the desired policy impact.

¹ CODSIA currently consists of six industry trade associations and thus represents the comments of thousands of federal government contractors nationwide on acquisition policy issues. A CODSIA comment letter is not a letter from a single organizational entity but from thousands of affected stakeholders. This unique status as the conveyor of regulatory comments for some of the largest trade associations working on acquisition policy also represents the collective expertise of these associations and the companies they represent.

Section 818 sets forth a phased implementation process divided between internal DoD actions and a subsequent set of regulatory steps aimed at DOD contractors. The statute reserves the first six months of the implementation process to an assessment of current departmental counterfeit parts policies and enumerates specific actions to be taken thereafter to respond to the statute, including:

1. Defining some, but not all, of the relevant terms of art;
2. Producing guidance for DOD buying components acquiring electronic parts using a risk based approach to D/A;
3. Creating guidance on remedies with repeat offending suppliers, including possible suspension and debarment action; and
4. Creating processes for DOD personnel to provide notice to DOD authorities and GIDEP within 60 days of awareness of counterfeit electronic parts in supply chain

The statute requires the Secretary to define “counterfeit electronic part” and “suspect counterfeit electronic part” as part of the Department’s preliminary regulatory steps, but only the term “electronic part” and “covered contractor” are otherwise defined in the statute. Among other concerns, CODSIA member associations note that a lack of consistent definitions of the many terms of art has been a serious impediment to previous industry and government regulatory and standards bodies attempting to reach consensus on a counterfeit parts framework. We thus recommend that the Department not limit themselves to only the few specified definitions, but collaboratively undertake with industry the task of defining other relevant terms prior to any published rulemaking.

From the point in time that DOD completes their internal six month assessment, which does not call for any industry interaction or communication whatsoever, the statute allows only 3 additional months for DOD to complete an external contractor regulatory regime that is many orders of magnitude greater in complexity than their internal efforts, since it implicates the global commercial supply chain for all of American industry, not just those selling products to the DOD. Among other requirements, some of the regulations required by the statute include:

1. Establish a contracting framework shifting sole liability to DOD contractors to repair/replace counterfeit electronic parts;
2. Require contractors to use a “trusted supplier” system for acquisition of electronic parts from OEMs, authorized distributors or other sources provided other quality assurance requirements applied to the purchase;
3. Set up a qualification process under 10 USC 2319 to facilitate erection of a national trusted source infrastructure where none currently exists;
4. Require contractors to set up a D/A system subject to DOD review and approval, including building new quality and contractual policies and practices into their supplier and vendor acquisition and contracting systems; and

5. Require contractors and subcontractors to provide notice to DOD customers of counterfeit electronic parts within 60 days after awareness or suspicion that counterfeit electronic parts are in their supply chains or end products.

While it may be possible for the Department to stand up a comprehensive framework for their suppliers within that compressed 3 month period of time, it is also reasonable to conclude from the complexity of the statute's requirements and the history of previous supply chain regulatory efforts that 3 months is simply not enough time to fundamentally change the nature of the existing global supply chain for the defense industrial base.

Accordingly, CODSIA encourages early and broad communications and offers to participate in any and all of the above noted exercises, as well as any other related activities where a dialogue and engagement with industry can be established. We are hopeful that these efforts will not necessitate the use of interim acquisition rules in the DFARS without prior opportunity for comment.

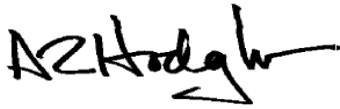
Considering the stakes for the department and its contractors in terms of mission accomplishment and national security, CODSIA requests that:

1. The Department involve the DOD contractor community in the collaborative creation of counterfeit electronic parts policies including, at the very least, a series of public meetings or draft regulations during the first month or two of policy formulation and throughout the entire implementation time.
2. To the maximum extent practicable, the Department insure that any regulatory process provide a full opportunity for collaboration with affected parties in time to provide productive comments to inform any proposed rulemaking.

CODSIA member association representatives are available immediately to meet with you to establish a framework for collaborative efforts. Please don't hesitate to contact Trey Hodgkins with TechAmerica and the CODSIA project officer at 703-284-5310 or at

thodgkins@techamerica.org or Bettie McCarthy, CODSIA's Administrative Officer at 703-875-2051 or codsia@pscouncil.org for additional information.

Sincerely,



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and Procurement Policy
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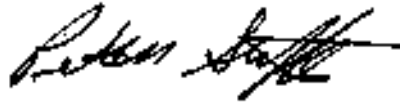
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