



ACQUISITION  
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

DEC 28 2018

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER COMMAND  
(ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
ASSISTANT SECRETARY OF THE ARMY FOR ACQUISITION,  
LOGISTICS, AND TECHNOLOGY  
ASSISTANT SECRETARY OF THE NAVY FOR RESEACH,  
DEVELOPMENT, AND ACQUISITION  
ASSISTANT SECRETARY OF THE AIR FORCE FOR  
ACQUISITION, TECHNOLOGY, AND LOGISTICS  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Acquisition Workforce Implementation of Enhanced Procedures for Supply Chain Risk Management in Support of Department of Defense Trusted Systems and Networks

Deputy Secretary of Defense memorandum, “Enhanced Section 806 Procedures for Supply Chain Risk Management in Support of Department of Defense (DoD) Trusted Systems and Networks,” dated March 13, 2018, established enhanced procedures for enterprise use of section 806 of the Ike Skelton National Defense Authorization Act (NDAA) for FY 2011 (Section 806), as implemented at Defense Federal Acquisition Regulation Supplement (DFARS) subpart 239.73, “Requirements for Information Relating to Supply Chain Risk.”

The authorities originally provided by Section 806 were subsequently updated, made permanent, and codified at Section 2339a of Title 10, United States Code.<sup>1</sup> Accordingly, all references to the statutory authority will now refer to Title 10, United States Code, 2339a (Section 2339a), rather than Section 806. Class deviation 2018-O0020, “Permanent Supply Chain Risk Management Authority,”<sup>2</sup> has made the corresponding revisions to DFARS subpart 239.73; and all references to Section 806 in other previously issued guidance regarding these authorities (e.g., the March 13, 2018, Deputy Secretary of Defense memo) shall be deemed to refer to Section 2339a, unless advised otherwise by legal counsel.

These policies and procedures authorize the Under Secretary of Defense for Acquisition and Sustainment, and the Section 2339a Authorized Officials in the Military Departments, to make determinations that the exercise of Section 2339a authority is necessary for a class of procurements (i.e., class determinations), or for individual procurements (i.e., individual

<sup>1</sup> See section 881 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232).

<sup>2</sup> Available at [https://www.acq.osd.mil/dpap/dars/class\\_deviations.html](https://www.acq.osd.mil/dpap/dars/class_deviations.html).

determinations). However, in all cases, the exercise of the Section 2339a authority to exclude a source or withhold consent to subcontract is accomplished on a case-by-case basis, through execution of individual covered procurement actions that are within the scope of such determination, and for which the facts and circumstances of the individual case do not warrant granting an exception.

I direct that all DoD acquisition personnel use the Supplier Performance Risk System (SPRS) to ensure access to the list of Section 2339a class determinations (NSS Restricted List). All procurement officials, regardless of procurement dollar value, shall verify that the award will not involve any entity, product, or service that is within the scope of the NSS Restricted List in SPRS when acquiring a “covered system” or a “covered item of supply” (as defined at DFARS 239.7301), unless an exception is granted. Acquisition personnel shall follow the attached procedures when executing a covered procurement action (see DFARS 239.7305) that is authorized pursuant to a Section 2339a class determination, or when seeking an exception from such a class determination. When executing a covered procurement action authorized by a Section 2339a individual determination, acquisition personnel shall follow DFARS subpart 239.73 and DoD Instruction 5200.44, “Protection of Mission Critical Functions to Achieve Trusted Systems and Networks.”

After a Section 2339a class determination has been made and posted to SPRS, all DoD Components shall take steps to identify any covered system or covered item of supply identified in the determination that has been previously procured and has already been installed or deployed, or performance is underway; has been delivered but not yet installed or deployed; or is under contract pending delivery or performance. DoD Components shall mitigate these risks in accordance with any applicable U.S. Cyber Command operational orders.

Questions regarding any element of these procedures should be directed to the points of contact listed in the attached procedures.



Ellen M. Lord

Attachment:  
As stated

cc:  
Administrator of the General Services Administration

IMPLEMENTATION PROCEDURES FOR ENTERPRISE-WIDE USE OF  
SECTION 2339a SUPPLY CHAIN MANAGEMENT AUTHORITIES FOR  
DEPARTMENT OF DEFENSE NATIONAL SECURITY SYSTEMS (NSS)

The following procedures implement Deputy Secretary of Defense memorandum, “Enhanced Section 806 Procedures for Supply Chain Risk Management,” dated March 13, 2018, which established enhanced procedures for enterprise use of section 806 of the Ike Skelton National Defense Authorization Act (NDAA) for FY 2011 (Section 806), as implemented at Defense Federal Acquisition Regulation Supplement (DFARS) subpart 239.73. The authorities originally provided by Section 806 were subsequently updated, made permanent, and codified at section 2339a of Title 10, United States Code.<sup>3</sup> Accordingly, all references to the statutory authority will now refer to 10 U.S.C. 2339a (Section 2339a), rather than Section 806. All references to Section 806 in previously issued guidance regarding these authorities (e.g., the March 13, 2018, Deputy Secretary of Defense memo) shall be deemed to refer to Section 2339a, unless advised otherwise by legal counsel.

1. DFARS subpart 239.73, “Requirements for Information Relating to Supply Chain Risk” (DEVIATION 2010-O0020<sup>4</sup>). Department of Defense (DoD) Components shall not purchase “covered systems” or “covered items of supply” (as defined as DFARS 239.7301) except through solicitations and contracts, orders or agreements that include the provision at 252.239-7017, “Notice of Supply Chain Risk” (DEVIATION 2010-O0020), and the clause at DFARS 252.239-7018, “Supply Chain Risk” (DEVIATION 2010-O0020).
  - a. DoD Components shall ensure that solicitations and contracts to procure any covered system or covered item of supply include all of the necessary performance specifications, evaluation factors, provisions, and clauses to enable use of the authorities in Section 2339a, pursuant to DFARS subpart 239.73. See also, DFARS 208.405; 208.7402(2); 212.301(c); 213.106-1(a)(2); 214.201-5(c); 214.503-1(a)(4); 215.304(c)(v); 215.503; 215.506; 233.102; and 244.201-1.
  - b. Supply chain risk can then be evaluated based on information, public and non-public, including all-source intelligence, relating to an offeror or contractor and its supply chain. See DFARS 252.239-7017(b); 252.239-7018(c).
2. Class Determinations. The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is authorized to make class determinations to exercise Section 2339a authority for covered procurements (see DFARS 239.73) by any DoD Component, and will provide notice to Congress of such class determinations. The Section 2339a Authorized Officials for the Military Departments (i.e., the Secretaries of the Military Departments or their senior acquisition executives if delegated authority pursuant to DFARS 239.7303(b)(2)) can also make class determinations for their respective Military Departments, and will provide notice of any such Determination to:

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<sup>3</sup> See section 881 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232).

<sup>4</sup> Class Deviation 2018-O0020, “Permanent Supply Chain Risk Management Authority,” available at [https://www.acq.osd.mil/dpap/dars/class\\_deviations.html](https://www.acq.osd.mil/dpap/dars/class_deviations.html).

- a. Congress, as required by DFARS 239.7304(c);
- b. Each covered entity, pursuant to Section 3 below; and
- c. Defense Pricing and Contracting (DPC), for inclusion in the list of Section 2339a class determinations (NSS Restricted List) in the Supplier Performance Risk System (SPRS) (see section 4 below)

3. Covered Entity Notification.

- a. The Section 2339a Authorized Official making the class determination will notify each covered entity (e.g., an offeror, contractor, vendor, supplier, or other source covered by the class determination) by certified mail, return receipt requested, of each determination and the scope of such determination.
- b. The notification will indicate the extent to which the Section 2339a Authorized Official has determined that limitations on the disclosure of information relating to the basis for the determination are necessary to protect national security. The notification will also include any information regarding the basis for the determination that the Section 2339a Authorized Official has determined are releasable to the covered entity, or are not subject to any limitations on disclosure. The notice will be designated preliminarily as For Official Use Only (FOUO) to protect the confidentiality of this information, until such time as the information, in whole or in part, may be approved for public release.
- c. The notification will provide the covered entity an opportunity to challenge and request reconsideration of the class determination (or the annual review described as section 6 of these procedures) not later than 30 days after receipt of any such notice, as follows:
  - i. The covered entity shall submit in writing to the Section 2339a Authorized Official making the class determination, within 30 days of receipt of the notification, information and argument in support of the covered entity's challenge and request for reconsideration.
  - ii. If a challenge is submitted, the covered entity will be afforded an additional 30 days, from the date the Section 2339a Authorized Official received the challenge, to appear (including with legal counsel, if desired by the entity) and submit additional documentary evidence.
  - iii. The Section 2339a Authorized Official may extend the time to appear and submit documentary evidence upon written request by the covered entity.
  - iv. The multi-disciplinary team described at paragraph 3.d. of the Deputy Secretary of Defense memorandum will review the merits of the challenge and make a recommendation to the Section 2339a Authorized Official who made the class determination. The Government will strive to resolve any challenge within 60 days of receipt of the challenge.

4. The NSS Restricted List in SPRS.

- a. Posting in SPRS. Immediately upon signature of a class determination, Director, DPC will post a notification about that class determination in the NSS Restricted List in SPRS.
- b. Summary of the Scope of Each Class Determination. Each entry in the NSS Restricted List shall contain the following information summarizing the scope of what is covered by each class determination:
  - i. Covered Entity/Entities: the name and address, and CAGE Code and other Unique Entity Identifier(s), identifying the covered entity/entities (with cross-references when more than one name is involved in a single action).
  - ii. Covered Product(s) or Service(s): the IT product(s) or services, and any conditions or limitations which are excluded.
  - iii. Covered Procurements: identification of specific conditions or limitations on the covered procurements that are subject to the determination (e.g., if limited to specific DoD Components/organizations).
  - iv. Covered Period: the effective duration of the determination (e.g., the annual review date for each listing (see section 6 below)).
- c. Safeguarding FOUO/CUI Information. The information in the NSS Restricted List will be designated as FOUO, or include other forms of Controlled Unclassified Information (CUI), and must be protected against unauthorized use and disclosure.

5. Executing a Covered Procurement Action.

- a. Checking the NSS Restricted List. When procuring any covered system or covered item of supply, contracting officers shall, prior to making any competitive range determination and immediately prior to award, verify whether any entities, products, or services identified in, or otherwise known to be involved in, the selected offer(s) are within the scope of a class determination listed in the NSS Restricted List.
- b. Actions Within Scope of a Class Determination. If any such entity, product, or service is listed in the NSS Restricted List, DoD Component(s) or organizations for which the class determination applies shall not award contracts to, or consent to subcontracts with, that named entity or any other entity for the products or services that are within the scope of the class determination, unless an exception has been granted (see paragraph 5.c below). This prohibition includes placing orders under indefinite quantity contracts, and Federal Supply Schedule contracts, adding new work, exercising options, or otherwise extending the duration of current contracts or orders, as allowed by FAR 9.405-1.
- c. Exceptions to Class Determinations. A DoD Component/organization may submit, in writing to the organization email address (see section 8 below) a request for an

exception to the class determination. Such request shall include a detailed description of—

- i. The circumstances for which a covered procurement action that is otherwise required by a class determination should not be taken (e.g., mission impact resulting from excluding the entity or product presents a greater risk to national security than the supply chain risk; a technical mitigation or other less intrusive measure is reasonably available to reduce the supply chain risk);
  - ii. The specific actions being proposed that varies from the requirements of the class determination; and
  - iii. How these circumstances and actions effectively address the risk to national security that are described in the class determination.
- d. **Written Authorization to Proceed.** The DoD Component/organization shall not proceed with a procurement action to the entity/product(s) listed in the NSS Restricted List unless authorized to do so in writing by the Section 2339a Authorized Official that made the class determination.

#### 6. Annual Review of Class Determinations

- a. The multi-disciplinary team described at paragraph 3.d. of the Deputy Secretary of Defense memorandum will provide an annual review of each class determination prior to the date of notification to the vendor to ensure the determination remains valid, and will make a recommendation to the Section 2339a Authorized Official who made the class determination regarding the extension, modification, or termination of that Determination.
- b. The Section 2339a Authorized Official making the class determination will notify each covered entity by certified mail, return receipt requested, of the results of the annual review and will provide the covered entity the opportunity to challenge and request reconsideration of the results of the annual review (see Section 3.c. of these procedures.)

#### 7. Annual Report to Congress

- a. For all class determinations, the Section 2339a Authorized Official making that determination will notify the Director, Defense Pricing and Contracting (DPC) of the initial class determination; of the results of the annual review; and of all covered procurement actions, immediately upon issuance of the action.
- b. The USD(A&S) shall submit an annual, aggregated report to Congress identifying all covered procurement actions taken by any DoD Component during the annual reporting period. Contracting activities must identify each covered procurement action for inclusion in the aggregated report using the organization mailbox identified below.

8. Points of Contact

<b>Office -- Subject Matter</b>	<b>Contact</b>
Report of Covered Procurement Action	osd.pentagon.ousd-a-s.mbx.2339a-covered-actions@mail.mil
Request for Exception	osd.pentagon.dod-cio.mbx.2339a-exception@mail.mil