



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

July 26, 2021

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 Updated Procedures for Supply Chain Risk Management in Support of Department of Defense Trusted Systems and Networks

Department of Defense (DoD) memorandum, "Procedures for Supply Chain Risk Management in Support of Department of Defense Trusted Systems and Networks," dated May 14, 2021, and jointly signed by the DoD Chief Information Officer (CIO) and the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), revised DoD procedures for enterprise use of section 2339a of Title 10, United States Code (U.S.C.) as implemented at Defense Federal Acquisition Regulation Supplement (DFARS) subpart 239.73, "Requirements for Information Relating to Supply Chain Risk." Accordingly, the policy memorandum dated December 18, 2018, "Acquisition Workforce Implementation of Enhanced Procedures for Supply Chain Risk Management in Support of Department of Defense Trusted Systems and Networks," is superseded by the attached updated procedures.

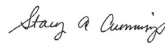
These policies and procedures authorize the USD(A&S), and the Section 2339a Authorized Officials in the Military Departments, to make determinations that the exercise of Section 2339a authority is necessary for a class of procurements (i.e., class determinations), or for individual procurements (i.e., individual 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 access the list of Section 2339a class determinations (National Security Systems (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, to include use of sole source or brand-name justifications, 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 or DoD CIO guidance.

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

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Stacy A. Cummings
Principal Deputy Assistant Secretary of Defense
(Acquisition)
Performing the Duties of Under Secretary
of Defense Acquisition and Sustainment

Attachment:
As stated

cc:
Administrator of the General Services Administration

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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 Department of Defense (DoD) memorandum, “Procedures for Supply Chain Risk Management in Support of DoD Trusted Systems and Networks,” dated May 14, 2021, and jointly signed by the DoD Chief Information Officer (CIO) and Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), which revised DoD procedures for enterprise use of section 2339a of Chapter 10, United States Code (U.S.C.), as implemented at Defense Federal Acquisition Regulation Supplement (DFARS) subpart 239.73.

1. DFARS subpart 239.73, “Requirements for Information Relating to Supply Chain Risk”
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,” and the clause at DFARS 252.239-7018, “Supply Chain Risk.”
 - 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. Insert the provision at 252.239-7017, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301, and insert the clause at 252.239-7018 in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for information technology, whether acquired as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined at 239.7301. 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 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:

- 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 provide the following:
 - i. A description of the scope of the 2339a determination;
 - ii. A description of 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;
 - iii. The information regarding the basis for the determination that the Section 2339a Authorized Official has determined is releasable to the covered entity, or is not subject to any limitations on disclosure; and
 - iv. An opportunity to request reconsideration of the class determination as described in section 4 of these procedures, including a description of the procedures governing reconsideration.
- c. The notice will be designated preliminarily as Controlled Unclassified Information (CUI) to protect the confidentiality of this information, until such time as the information, in whole or in part, may be approved for public release.

4. Reconsideration

The Section 2339a Authorized Official has discretion to define these reconsideration procedures, provided they comply with the minimum standards set forth in section 4.

- a. A covered entity may request reconsideration of the Section 2339a determination. The Section 2339a Authorized Official shall resolve such a reconsideration request in accordance with the following:
 - i. The request itself must be received by DoD at the designated point of entry within 15 days of issuance of the notice described in Section 3 of these procedures.

- ii. Reconsideration shall be based on the covered entity's written submission of information and argument to be submitted to the Section 2339a Authorized Official who made the determination. All written information in support of the request must be received by DoD within 30 days of DoD's receipt of the request for reconsideration.
 - iii. The Section 2339a Authorized Official who made the class determination will review the merits of the request and will make best efforts to resolve the initial reconsideration request within 90 days of receipt at the designated point of entry. Subsequent requests for reconsideration or review may be addressed at the discretion of the Section 2339a Authorized Official.
- b. All reconsideration requests and information submittals should comply with the designated submission procedures and timelines as provided to the covered entity with the notice described in Section 3 of these procedures. Information that is not submitted in accordance with those procedures may be considered at the discretion of the Section 2339a Authorized Official.
 - c. All references to "days" refer to calendar days. Any timeline that ends on a non-business day (e.g. Saturday, Sunday, Federal holiday), shall toll to the next business day. The Section 2339a Authorized Official may extend any timeline set forth in the reconsideration procedures at his or her discretion.

5. The NSS Restricted List in SPRS.

- a. Posting in SPRS. Immediately upon receipt of a signed class determination, the Director, DPC will post a notification in the NSS Restricted List in SPRS.
- b. Summary of the Scope of Each Class Determination. Each entry on 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).
- c. Safeguarding CUI Information. The information in the NSS Restricted List may be designated as CUI, and if so designated, shall be protected against unauthorized use and disclosure in accordance with governing regulation and policy.

6. 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 a request for an exception to the class determination to the Section 2339a Authorized Official who made the initial determination. Such request shall be submitted in writing and 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 vary 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.

7. Review of Class Determinations

- a. To ensure the determination remains valid, the Section 2339a Authorized Official who made the initial determination will periodically review each class determination as circumstances warrant, to include the following considerations:
 - i. Material changes to known threat information;
 - ii. Known material changes to the ownership or control of the covered entity (e.g., sale, merger); or

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- iii. Other known material changes to circumstances relevant to the basis of the Section 2339a determination.
- b. The Section 2339a Authorized Official will review to assess if the class determination should be modified or terminated and shall notify the covered entity of any change to the class determination by certified mail, return receipt requested. Such notice shall be issued in accordance with the requirements of Section 3 of these procedures, to include provision to the covered entity of an opportunity to request reconsideration of the revised Determination in accordance with Section 4 of these procedures.

8. 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 and of the results of any subsequent review immediately upon issuance of the action.
- b. The USD(A&S) shall submit an aggregated report to Congress identifying all covered procurement actions taken by any DoD Component during the reporting period.
- c. Contracting activities must provide notice of each covered procurement action, immediately upon issuance, using the organizational mail box identified below. At a minimum, the notice must include the type of covered procurement action (as defined at 10 U.S.C. § 2339a(e)(3)(A), (B), or (C)), the covered entity as identified in SPRS, the justification required by 10 U.S.C. § 2304(f)(3), if applicable, and a point of contact for the action.

9. Points of Contact

Office -- Subject Matter	Contact
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