

PLANETARY  
SYSTEMS  
CORPORATION

September 12, 2005

Defense Acquisition Regulations Council  
Attn: Ms. Amy Williams  
OUSD (AT&L) DPAP (DAR)  
IMD 3C132, 3062 Defense Pentagon  
Washington, DC 20301-3062

Subject: DFARS Case 2004-D010

Dear Defense Acquisition Regulations Council:

We are a small, U.S.-owned company located in Maryland. We develop and build innovative separation systems for aerospace applications. As a business of five employees with evolving technology, we strongly recommend that the U.S. Department of Defense (DoD) withdraw proposed rule 48 CFR Parts 204, 235, and 252.

As a small business we can cite five reasons for withdrawal of this rule:

1. The proposed rule is overly broad and sets up an ineffective badge system for all foreign nationals.
2. The proposed rule goes beyond the requirements of ITAR and sets up a new system that the business owners must fund and support.
3. The language in the proposed rule is inconsistent with existing export control language and requirements.
4. The U.S. Department of State was apparently unaware of this DoD effort and should be notified.
5. The addition of this rule will decrease security because it will divert limited resources to a redundant and ineffective system and reduce U.S. firm competitiveness.

While we respect DoD's attempt to respond to criticism found in the Inspector General's 2004 report, these issues demonstrate that the proposed rule is not a suitable response and should be withdrawn in favor of better enforcement of existing regulations.

First, the proposed rule is overly broad because it requires all foreign nationals to wear distinctive badges, even if they have been approved to review the data or commodity. This means that the badges do not tell others whether a foreign national has government permission to review the data or commodity at hand. The badges actually provide no additional security; they only indicate that the wearer has citizenship in a country other than the U.S.

Second, aside from a few minor components, the proposed rule aims to establish a system that exhibits substantial and unnecessary redundancy with ITAR and EAR. This would

mean another security system that the business owners must learn, fund, and support, with little if any added functionality. If this rule is not withdrawn, exports will not only be directly regulated by the U.S. Department of State (under ITAR), the U.S. Department of Commerce (under EAR), and the U.S. Department of Homeland Security's U.S. Customs and Border Protection, but now the DoD needs to add additional rules. This is extremely redundant. Three departments of the Executive Branch are more than enough to govern small businesses such as ours; adding a fourth department only makes the burden greater without improving security. If the usual pattern holds, the DoD will with time add to and elaborate this regulation, further burdening small shops such as ours. Additionally, the DoD suggests, under "B. Regulatory Flexibility Act," that the proposed rule will not significantly impact small businesses. It states that this is because the businesses "are already subject to export control laws and regulations." This is circular logic. The DoD is using existing regulations to justify the burden of additional regulations. Additional regulations add additional costs. The proposed rules require an additional system that will increase the regulatory burden on an already heavily regulated industry.

Third, the proposed rule is inconsistent with existing export control language in other regulations. Subpart 204.7302 "General" states:

Any access to export controlled information or technology by a foreign national or foreign person anywhere in the world, including the United States, is considered an export to the home country to the foreign national or foreign person.

The U.S. Department of State terms this a "deemed export", not an "export". The distinction is important: A deemed export has its own special rules and requirements. The proposed regulation fails to account for that difference.

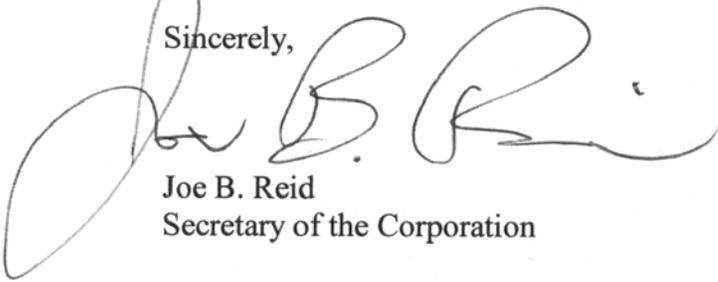
Fourth, the various departments of the Government can best work when they coordinate their efforts to regulate our businesses. Allegedly the Department of State was not notified of this proposed rule prior to its publication in the Federal Register. Communicating with the Department of State is appropriate because they currently provide the strictest and most relevant regulations for what DoD wants to regulate. Placing this proposed rule before the Department of State for their review would enable development of a coordinated regulatory system without cumbersome redundancy. In fact, some language in the proposed rule is inconsistent with existing regulations. This creates confusion, which is especially disheartening since the proposed rule provides no additional benefits.

Fifth, rather than adding a hodgepodge of new regulations, the DoD, and the U.S. government as a whole, would better serve the public and national security by ensuring compliance with more effective existing rules. An efficient regulatory system, where proposed rules are evaluated on results will allow U.S. firms to retain control of their markets while maintaining national security. A redundant and ineffective system will leave fewer resources for better regulations (in some ways reducing security) and gradually force us to surrender market shares. The government must coordinate and

select the regulations that most deserve resources because they achieve important goals, like national security. This DoD system is not one deserving government and private resources. It is much less effective than existing regulations. Ineffective regulations like this are a particular problem for small, innovative companies such as ours. Our main competitor is a Swedish firm; unnecessary regulations allow them to undercut our price and prevent us from successfully marketing our products. Our technology is superior to our competitor's, but with unnecessary costs, we cannot establish our company as the go-to source for separation systems and related technology in the global space industry. Insofar as we are a U.S.-based company, wholly owned by U.S. citizens, our business success would bring this part of the industry back to U.S. shores. This is a far more effective control of this technology than the proposed rule.

In sum, the proposed rule is ineffective, redundant, confusing, unduly burdensome, and diverts resources from more effective regulations. The argument that additional regulatory costs are justified by existing regulatory costs is wrong. For these reasons, we strongly recommend that the U.S. Department of Defense withdraw proposed rule 48 CFR Parts 204, 235, and 252.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe B. Reid". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Joe B. Reid  
Secretary of the Corporation