



September 27, 2021

Celeste Drake
Made in America Director
Office of Management and Budget

Re: Comments by the Hydraulic Institute Regarding Proposed FAR Council Rule Under the Buy American Act (FAR Case 2021-008)

Dear Ms. Drake,

The Hydraulic Institute (“HI”) is the largest association of pump industry manufacturers in North America and it has served member companies and pump users since its founding in 1917 by providing product standards and serving as a forum for the exchange of industry information. Pumps are used in an extremely broad array of applications relevant to the proposed rules, from water infrastructure end uses, in chemical and petrochemical handling, in construction, heating and cooling, in military and space applications, and in many other relevant applications too numerous to mention.

As an association representing many large and small U.S. manufacturers, it is critical to note that HI fully supports initiatives that enhance the economic health and well-being of U.S. manufacturers and their employees as they work to support Federal Acquisition projects. We recognize that support for those projects results in strengthening the U.S. economy and protecting U.S. national security.

On July 30, 2021, the Defense Department, General Services Administration, and National Aeronautics and Space Administration (the “Government”) issued a notice in the Federal Register proposing to amend the Federal Acquisition Regulation (“FAR”) to implement Executive Orders addressing domestic preferences in government procurement.¹ Among other issues, the Government seeks comments on whether: (i) the commercially available off-the-shelf (“COTS”) waiver benefited domestic firms and their employees; (ii) current market circumstances support narrowing or lifting the waiver; (iii) application of the COTS waiver has been consistent with its purposes; and (iv) the Government should collect domestic content information on COTS items. Below, HI provides comments on certain aspects of these proposed rule changes.

First, notwithstanding our support of the broader initiatives described in the underlying Executive Orders and the resulting proposed amendments to the FAR, there are specific areas where we think the proposals could be improved as they affect the pump industry. For example, HI opposes the elimination of the COTS component test waiver for pumps. In fact, we propose that any potential action on removing the COTS waiver be reconsidered in its entirety. The COTS waiver was created in 2009² by the FAR Council to

¹ See generally 86 FR 40980 (July 30, 2021) (“Proposed Rule”).

² See 74 FR 2713 (Jan. 15, 2009).

implement the Clinger-Cohen Act of 1996. It is our understanding that the burden on U.S. manufacturers without a COTS waiver was judged to be too damaging to U.S. industry as well as having the potential to negatively affect Government procurement efforts by making certain products unavailable or too costly. This remains the case in 2021 and we have seen no increase in US production for the components used in pump manufacturing. Significant parts of many pumps, including particularly the entire outer body (e.g. casing, volute) and many pump impellers³ are made of iron or steel that are often manufactured outside of the U.S. because of a serious lack of domestic availability of these items.

Second, a COTS waiver for pumps is crucial to maintaining and growing well-paying America jobs in the pump industry. Without the COTS waiver, many pumps cannot meet the component test requirements for federal acquisition under the proposed rule. The U.S. pump industry is at a critical point in its economic recovery from the Covid-19 pandemic, and it is working to expand capacity in response to anticipated greater demand for water infrastructure improvement projects and to assist with the Government's response to climate change challenges and severe weather events.⁴ The Proposed Rule would jeopardize the recovery of the U.S. pump industry from the economic damage caused by Covid-19 by making it impossible to find a sufficient volume of domestic sources of pump casings and impellers due to the lack of domestic availability of these manufactured items in the numbers required to supply our industry. Additionally, because most pumps can currently claim COTS, this proposed regulation would have a compounding effect by first adding a component test and then also raising the content threshold substantially.

Further, in response to the proposed rule, the U.S. Chamber of Commerce stated that "mandating further increases in procurement thresholds and quotas is inefficient, costly and ultimately counterproductive."⁵ We are also concerned that the elimination of the COTS waiver would correlate directly to the loss of U.S. manufacturers' ability to supply the Government's need for qualifying pumps, and we are concerned that this would have a detrimental effect on both U.S. national security and U.S. jobs in the pump industry as domestic production is scaled back because of proposed new domestic content requirements.

Third, even with the challenges the industry has experienced with global supply chains, including difficulty and delays in sourcing casings and impellers, the industry has not seen a significant increase of domestic sources of supply for these items. Moreover, we have not seen signs of investment in domestic manufacturing capability for future supplies of these niche products.

In the alternative, if the COTS waiver is to be removed for the pump industry, we (and we suspect many other industries) should be afforded more time so that there is a rational and reasonable opportunity for U.S. casing and impeller manufacturers to reestablish themselves and create the capacity to supply pump producers with the volume of products necessary. Implementing an orderly process for this to occur

³ Pump impellers are the bladed member of a rotating assembly of the pump which imparts the principal force to the liquid pumped. See https://pumps.org/Pump_Terms_and_Definitions.aspx

⁴ Nicole Krawcke, "Pump market sees positive growth despite COVID-19 setback," *PM Engineer* (Apr. 13, 2021), available at: https://digitaledition.pmengineer.com/april-2021/feature-1/?_ga=2.257848779.1150293677.1618327194-1716314232.1595959783.

⁵ Alex Leary and Ken Thomas, "Biden Proposes Buy American Rule for Government Procurements," *Wall Street Journal* (July 28, 2021), available at: <https://www.wsj.com/articles/biden-to-propose-buy-american-rule-for-government-procurements-11627462800>.

through a reasonable phase-out of the COTS waiver over a 10 year period of time (for example) would allow investors to understand the value of creating domestic manufacturing capabilities for these items, and time for the required plants and facilities to be built. It is our understanding that before they could be brought on line, such facilities would take several years to plan, fund, and build and so a gradual approach to eliminating the COTS waiver is a sensible approach, if the COTS waiver must be eliminated for this industry.

According to a 2018 Government Accountability Office study, of the \$196 billion in federal obligations in fiscal year 2017 to purchase end products, just \$7.8 billion (or 4 percent) was allocated towards foreign end products.⁶ 46 percent of the total was due to exceptions/waivers, but only 19 percent (\$700 million) were actual Buy American Act exceptions. The remaining 81% used the DOD's qualifying country exception under the law's "public interest" waiver.⁷ Thus, the Government's own data show exceptions to Buy America requirements constitute a minority of federally funded purchases.

Finally, as currently proposed, the reporting requirements exceeds the industry's ability to comply. In our view, the proposed reporting process requires too much time to implement in a cost effective way for the proposed monitoring gain creating a burden on manufactures across all industries. We request that the reporting requirement be significantly streamlined to reduce the burden on industry.

In conclusion, we request that the COTS waiver remain in place overall, or that at least it remain in place for the pump industry, which presents a specialized, but critical case. If the COTS waiver must be eliminated for the pump industry, we request that it be phased out for this industry over a sufficient period of time (we recommend 10 years) to permit the creation of critical new domestic supply chains.

We thank you for this opportunity to comment.

Regards,



Michael Michaud
Executive Director
Hydraulic Institute

⁶ U.S. Government Accountability Office, "Actions Needed to Improve Exception and Waiver Reporting and Selected Agency Guidance" (Dec. 2018) at 12, available at: <https://www.gao.gov/assets/gao-19-17.pdf>.

⁷ *Id* at 14.