

Anti-Counterfeiting DFARS Modifications.

The U.S. Department of Defense (DoD) published on September 21 proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) regarding the detection and avoidance of counterfeit electronic parts (DFARS Case 2014-D005). The proposed amendments modify and expand previous DFARS rules implementing the NDAA of FY2012 in the areas of **definitions, traceability and coverage**.

The proposed **definitions** would:

- Revise the definition of “electronic part” by removing reference to embedded software or firmware.
- Add the term “original manufacturer.” “Original manufacturer” would be defined to include previous defined terms of: “contract electronics manufacturer,” “original component manufacturer,” and “original equipment manufacturer.”
- Add the term “authorized dealer,” defined as “a supplier with a contractual arrangement with the original manufacturer or current design activity, including an authorized aftermarket manufacturer, to buy, stock, re-package, sell and distribute its product lines.”
- Add the term “trusted supplier,” which would include four categories:
 - The original manufacturer of the part
 - An authorized dealer for the part
 - A supplier that obtains the part exclusively from the original component manufacturer of the part or an authorized dealer
 - A supplier that a contractor or subcontractor has identified as a trustworthy supplier using DoD-adopted counterfeit prevention industry standards and processes, including testing.

The comments section of the proposed rule notes that “authorized dealer” does not equate to “authorized reseller.”

Regarding **traceability**, contractors would be required to use risk-based processes that consider the consequences of failure of the electronic part. These processes must track the part from the original manufacturer to the product acceptance by the government. If the contractor is unable to establish traceability, then the contractor must complete “an evaluation that includes consideration of alternative parts or utilization of tests and inspections commensurate with the risk.” The evaluation would consider the following factors: 1) the probability of the part being counterfeit; 2) the probability that testing will detect a counterfeit; and 3) the consequences of a failed part.

The original manufacturer and authorized dealer appear to be excluded from these requirements.

Regarding expanded **coverage**, contractors would be required to flow down all requirements to all tiers. In addition, the requirements would also apply to COTS parts.

The proposed rule clarifies and expands the circumstances under which contractors and subcontractors at all tiers may buy electronic components.

- For parts in production or currently available in stock, the parts must be bought from:
 - The original manufacturer of the part;

- The original manufacturer's authorized dealers; or
- Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.
- For parts NOT in production or not currently in stock, the parts may be bought from suppliers identified by the contractor or subcontractor as trusted suppliers, provided:
 - The contractor uses established counterfeit prevention industry standards and processes, including testing, for identifying trusted suppliers; AND
 - The contractor or subcontractor assumes responsibility for the authenticity of the parts obtained from the trusted supplier; AND
 - The selection of such trusted suppliers is subject to review and audit by DoD.
- For parts NOT available from trusted suppliers, then contractors and subcontractors are required to comply with the notification, inspection, testing and authentication requirements utilizing risk-based assessments.

The deadline for filing comments on the proposed rule is November 20, 2015. ECIA members are invited and encouraged to review the proposed rule and submit comments or questions to Robin Gray at rgray@ecianow.org.

The proposed rule was published on September 21 in the *Federal Register* at 80 FR 56939. Further information about the proposed rule may be found at:

<https://www.federalregister.gov/articles/2015/09/21/2015-23516/defense-federal-acquisition-regulation-supplement-detection-and-avoidance-of-counterfeit-electronic>