

DoD Issues Final Counterfeit DFARS Rule

The Department of Defense (DoD) released its final rule regarding the “Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012-0055). The DFARS was published in the *Federal Register* at 79 FR 26092 on May 6. While the final rule addresses many of ECIA’s issues, it does raise other concerns. (A copy of the rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-05-06/pdf/2014-10326.pdf>).

The DoD made changes in several provisions that may be of interest to ECIA members, including:

- modifying the definition of “counterfeit electronic part”
- deleting the definition of “legally authorized source”
- expanding the definition of “electronic part”
- modifying the definition of “suspect counterfeit part”
- flowing-down requirements to all tiers
- adding requirements to the elements of a contractor’s detection and avoidance policy

A “counterfeit electronic part” is now defined as:

“an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

The following sentence was added to the definition of an “electronic part”:

The term “electronic part” includes any embedded software or firmware.

The definition for a “suspect counterfeit electronic part” has been modified to read:

“means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.”

The final rule also makes it clear that prime contractors are required to flow-down detection and avoidance requirements to all levels. This flow-down requirement also applies to COTS items.

There are a number of changes in the elements required to be in a contractor’s detection and avoidance policy. Component manufacturers and their authorized distributors should expect these requirements to flow-down to them.