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NASA Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Parts (NFS Case 2017-N010)

A Proposed Rule by the [National Aeronautics and Space Administration](#) on 01/07/2020

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Comments on the proposed rule should be submitted in writing to the address shown below on or before March 9, 2020, to be considered in the formation of a final rule.

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**Docket Number:**NASA-2020-0004 (<https://beta.regulations.gov/docket/NASA-2020-0004>)**Docket Name:**

Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Parts

Docket RIN

2700-AE38

PUBLISHED DOCUMENT

AGENCY:

National Aeronautics and Space Administration.

ACTION:

Proposed rule.

SUMMARY:

NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to add new text that requires covered contractors and subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as described above, they must purchase the parts from a NASA identified supplier or contractor-approved supplier. The contractor will then assume responsibility and be required to inspect, test and validate authentication of the parts. The contractor will also be required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

DATES:

Comments on the proposed rule should be submitted in writing to the address shown below on or before March 9, 2020, to be considered in the formation of a final rule.

ADDRESSES:

Submit comments identified by NFS Case 2017-N010, using any of the following methods:

○ *Regulations.gov*: <http://www.regulations.gov> (<http://www.regulations.gov>). Submit comments via the Federal eRulemaking portal by entering “NFS Case 2017-N010” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “NFS Case 2017-N010” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “NFS Case 2017-N010” on your attached document.

○ *Email*: Dorice.M.Kenely@nasa.gov (<mailto:Dorice.M.Kenely@nasa.gov>). Include NFS Case 2017-N010 in the subject line of the message.

○ *Mail*: National Aeronautics and Space Administration, Headquarters, Office of Procurement, Policy, Training and Pricing Division, Attn: Dorice Kenely, LP-011, 300 E Street SW, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT:

Dorice Kenely, NASA HQ, Office of Procurement, Policy, Training and Pricing Division, LP-011, 300 E Street SW, Washington, DC 20456-0001. Telephone 202-358-0443; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule implements section 823(c)(2)(B) of Public Law 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>), the National Aeronautics and Space Administration Transition Authorization Act of 2017. In this Section Congress stated it found in a 2012 Investigation by the Committee on Armed Services counterfeit electronic parts in the Department of Defense supply chain. From 2009 through 2010 the investigation uncovered 1,800 cases and over 1,000,000 counterfeit parts. This exposed the threat counterfeit parts pose to service members and national security. Since 2010, the Comptroller General of the United States has discussed in three reports the risks and challenges associated with counterfeit parts and counterfeit prevention at both the Department of Defense and NASA, including inconsistent definitions of counterfeit parts, poorly targeted quality control practices, and other potential barriers to improvements to these practices.

Start Printed
Page 664

With this rule, NASA is proposing to revise the NASA Federal Acquisition Regulation Supplement (NFS) to add new text requiring a covered contractor, defined as a contractor supplying an electronic part or a product that contains an electronic part, and their subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as described above they must purchase the parts from a NASA identified supplier or contractor-approved supplier. The contractor then assumes responsibility and be required to inspect, test and validate authentication of the part. The contractor will also be required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

II. Discussion

The following NFS subparts, 1812 “Acquisition of Commercial Items”, 1831 “Contract Cost Principles and Procedures” and 1846 “Quality Assurance” are being revised to add language to implement the requirements of the NASA Transition Authorization Act of 2017 by: Defining the term counterfeit electronic parts (1846

“Quality Assurance”); requiring covered contractors and subcontractors at all tiers to use parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers and identifying requirements when the contractor doesn't use those electronic parts (1846 “Quality Assurance”); and making the cost of corrective actions involving counterfeit parts unallowable unless the contractor meets the requirements stated in the proposed policy (1831 “Contract Cost Principles and Procedures”).

The additional definitions within the proposed policy to the NFS can be found in the DFARS 252.246-7007 and 252.246-7008, addressing the same subject, Detection and Avoidance of Counterfeit Parts. The proposed changes to the NFS will apply to all procurements involving electronic parts, end items, components, parts, or assemblies containing electronic parts, or services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

NASA is aware of one occurrence of a suspect counterfeit part within the last 17 years, as reported in Government Industry Data Exchange Program (GIDEP). Given what appears to be a low occurrence of counterfeit parts in NASA procurements, NASA anticipates the proposed rule will impose a limited burden on NASA contractors.

III. Expected Impact of the Proposed Rule and Differentiation From FAR Council Rule on GIDEP

Both the FAR final rule entitled, “Federal Acquisition Regulation: Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013-002)” published at 84 FR 64680 (/citation/84-FR-64680), and this NFS rule pertain to the topic of counterfeit parts and suspected counterfeit parts, however discernable differences do exist between the two rule as they are implementing separate acts. The FAR rule is implementing sections 818(c)(4) and (c)(5) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81 (<https://www.govinfo.gov/link/plaw/112/public/81?link-type=html>), 10 U.S.C. 2302 (<https://www.govinfo.gov/link/uscode/10/2302?type=usc&year=mostrecent&link-type=html>) Note) while the NFS rule is implementing section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)).

The following highlights the similarities and differences between these two rules:

Applicability—Commercial/COTS and SAT

The FAR Council determined that the FAR rule does not apply to commercial items, including commercially available off-the-shelf (COTS) items, or to contract at or below the simplified acquisition threshold (SAT). NASA has determined that the NFS rule applies to commercial items, including COTS items, and to contracts at or below the SAT. Section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)) does not provide for any exemptions to the requirements being implemented via this rule.

Scope

While both rules pertain to the topic of counterfeit parts and suspected counterfeit parts, the rules differ in the scope of items to which the regulations apply. The FAR rule has a broader application in the types of items that are covered under the new requirements. Specifically, the FAR rule is applicable to all items that

are subject to higher-level quality standards in accordance with the clause at FAR 52.246-11, Higher-Level Contract Quality Requirement; all items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate; and for the acquisition of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section. In addition, the FAR rule covers acquisitions that exceeds the simplified acquisition threshold and are by, or for, the Department of Defense for electronic parts or end items, components, parts, or materials containing electronic parts. Based on the requirements of section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)), the NFS rule applies only to electronic parts for use in a safety or mission critical applications.

Reporting/Notification

The FAR rule requires two reporting requirements which are currently cleared under OMB Control number 9000-0187 titled Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013-002)—FAR Sections affected: 52.246-26. One requirement is the submission of a report to GIDEP when the contractor becomes aware or has reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.*, seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is a counterfeit or suspect counterfeit item or a common item that has a major or critical nonconformance.

The second reporting requirement is a notification to the contracting officer after becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.*, seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit. While the NFS rule does not include a GIDEP reporting requirement, like the FAR rule, the NFS rule does include a requirement to notify the contracting officer when the contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

Start Printed
Page 665

Allowability of Costs

As required by section 823(c)(2)(B), of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)), the NFS rule establishes that costs related to counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts is unallowable unless a specific set of criteria is met. The FAR rule does not address the allowability of costs as it relates to the counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts.

Supply Chain Sources

As required by section 823(c), of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)), the NFS rule establishes required sources for both electronic parts that are in production or currently available in stock and separately electronic parts are not in production or currently available in stock from suppliers. The FAR rule does not address sources of items.

IV. Applicability to Commercial Item Acquisitions, Including Commercially Available Off-the-Shelf (COTS) Items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

The objective of this rule is to implement section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)). Section 823 does not limit the application of the requirements of the statute to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905 (<https://www.govinfo.gov/link/uscode/41/1905?type=usc&year=mostrecent&link-type=html>), 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply section 823 to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (</executive-order/13563>) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action which was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804 (<https://www.govinfo.gov/link/uscode/5/804?type=usc&year=mostrecent&link-type=html>).

VI. Executive Order 13771 (</executive-order/13771>)

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (</executive-order/13771>) because it is expected to result in no more than de minimus costs.

VII. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 (<https://www.govinfo.gov/link/uscode/5/601?type=usc&year=mostrecent&link-type=html>) *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized below.

The rule will apply to all “covered contractors.” Covered contractors, as defined by Public Law 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>) are contractors, including small entities, that supply an electronic part, or a product that contains an electronic part to NASA. While the rule will apply to all classes of small business, it will not necessarily affect those business because the rule requires reporting only when nonconforming defective and/or suspect counterfeit parts are present or there is suspicion that counterfeit parts are present in the supply chain. Since this rule requires contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, the authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or for products that are not currently in production use of a NASA identified contractor, NASA believes that there is very little risk that a contractor or subcontractor will have a counterfeit part in the supply chain and thus very little risk that a small contractor will have to report. As reported in FPDS, NASA has had contract obligations with 3,120, 3,023 and 2,805 small business contractors in 2016, 2017 and 2018, respectively and no counterfeit parts were found in the supply chain. Further, based on the initial scope of the rule, NASA has

assessed the number of commercial item acquisitions for electronic items procured above and below the simplified acquisition threshold and believe the impact of this proposed rule will be minimal. An analysis of data for the last three fiscal years from the FPDS revealed the following:

	Number of actions	Total dollar amount of actions
2019		
Electronic Commercial Items	131	\$17,810,644
Under the SAT	110	6,348,554
Above the SAT	21	11,462,089
2018		
Electronic Commercial Items	275	38,516,656
Under the SAT	229	10,922,058
Above the SAT	46	27,594,598
2017		
Electronic Commercial Items	526	38,020,457
Under the SAT	498	16,934,479
Above the SAT	28	21,085,978



Start Printed
Page 666

NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The policy requires covered contractors and subcontractors to notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

The proposed rule also requires covered contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, their authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or their authorized dealers. Electronic parts that are not currently in production or available in stock shall be obtained from NASA identified suppliers or contractor-approved suppliers and the contractor assumes responsibility for the authenticity, inspection, testing and traceability of the part. Contractor-approved suppliers are subject to review and audit by the CO.

VIII. Paperwork Reduction Act

This proposed rule contains information collection requirements that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, NASA has submitted a request for approval of a new information collection requirement associated with NFS Case 2017-N010 Detection and Avoidance of Counterfeit Parts to the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to be 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows based on:

Respondents: 1.

Responses per Respondent: 1.

Total Annual Responses: 1.

Preparation Hours per Response: 2.

Total Response Burden Hours: 2.

Data reported via GIDEP, reveals that NASA has had only one alert of suspect counterfeit parts associated with a NASA contract within the last 17 years. Additionally, GIDEP alerts across the government have decreased since 2011 to the present. Both the one NASA specific GIDEP alert over the course of 17 years, and the downward trend of GIDEP alerts across the government substantiate the expected burden amounts.

List of Subjects in 48 CFR: Parts 1812 “Acquisition of Commercial Items”; 1831 “Contract Cost Principles and Procedures”; 1846 “Quality Assurance”; 1852 Provisions and Clauses.

- Government procurement

Geoffrey Sage,

NASA FAR Supplement Manager.

Accordingly, NASA proposes to amend 48 CFR parts 1812 (/select-citation/2020/01/07/48-CFR-1812), 1831, 1846, and 1852 as follows:

1. The authority citation for parts 1816, 1832, and 1852 continues to read as follows:

Authority: 51 U.S.C. sec. 20113(a) and 48 CFR chapter 1.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 1812.301 by—

- a. Redesignating paragraph (f)(i)(T) as paragraph (f)(i)(U); and
- b. Adding a new paragraph (f)(i)(T).

The addition reads as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(T) 1852.246-74, Counterfeit Electronic Part Detection and Avoidance.

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PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Add section 1831.205-70 to read as follows:

1831.205-70 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) Scope. This section implements the requirements of section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)).

(b) The costs of counterfeit electronic parts, suspect counterfeit electronic parts, and any corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1)(i) The covered contractor, as defined in section 1846.7001, has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303 (/select-citation/2020/01/07/48-CFR-244.303); and

(ii) The covered contractor, including subcontractors, notifies the applicable NASA contracting officer in writing in accordance with 1846.7002(c); or

(2) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

PART 1846—QUALITY ASSURANCE

4. Add subpart 1846.70 consisting of sections 1846.7000 through 1846.7003 to read as follows:

Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance

1846.7000 Scope of subpart.

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)).

(a) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts; and

(b) Applies to electronic parts when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

(c) Contracting officers, in consultation with the requiring activity, are responsible for making a determination concerning the applicability of this section and the appropriate use of the prescribed contract clauses.

1846.7001 Definitions.

“Authentic part” means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

“Authentication” means a process to verify that a part is not counterfeit or suspect counterfeit.

“Authorized aftermarket manufacturer” means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications. □

□ Start Printed
Page 667

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified as trustworthy by a contractor or subcontractor as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

“Covered contractor” means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.

“Counterfeit electronic part” means 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.

“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.

“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” 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.

1846.7002 Policy.

The government and its contractors and subcontractors at all tiers are required to obtain electronic parts as prescribed in this section, whether the electronic parts are procured as discrete items or contained in an assembly.

(a) The covered contractor and subcontractors at all tiers shall obtain electronic parts that are in production or currently available in stock from—

(1) The original manufacturers of the parts;

(2) Their authorized dealers; or

(3) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.

(b) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (a) of this section, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(1) The covered contractor assumes responsibility for the authenticity of parts; and

(2) The covered contractor performs inspection, testing and authentication of parts; and

(3) The covered contractor obtains traceability information for the electronic parts (*e.g.*, data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(4) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) The covered contractor, including subcontractors, shall notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

1846.7003 Contract clause.

For acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246-74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—

(a) Electronic parts;

(b) End items, components, parts, or assemblies containing electronic parts; or

(c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 1852.246-74 to read as follows:

1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance.

As prescribed in 1846.7003, use the following clause:

Contractor Counterfeit Electronic Part Detection and Avoidance. (DATE)

(a) Definitions. As used in this clause—

“Authentic part” means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

“Authentication” means a process to verify that a part is not counterfeit or suspect counterfeit.

“Authorized aftermarket manufacturer” means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repack, sell, or distribute the part.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified by the contractor or subcontractor approved by the contractor or government as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

“Counterfeit electronic part” means 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.

“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application (section 823 (d)(2) of Pub L. 115-10).

“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company’s brand name.

Start Printed
Page 668

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” 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.

(b) *Sources of Electronics Parts.* In accordance with section 823(c)(3), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)), the covered contractor shall—

(1) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized dealers; or

(iii) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

(2) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (b) of this clause, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(i) The covered contractor assumes responsibility for the authenticity of parts; and

(ii) The covered contractor performs inspection, testing and authentication of parts; and

(iii) The covered contractor obtains traceability information for the electronic parts (*e.g.*, data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(iv) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) *Notification.* The covered contractor, including subcontractors, shall notify the NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

(d) Costs related to counterfeit electronic parts and suspect counterfeit electronic parts. In accordance with section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10 (<https://www.govinfo.gov/link/plaw/115/public/10?link-type=html>)), the costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The covered contractor has a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303 (/select-citation/2020/01/07/48-CFR-244.303); and

(2) The covered contractor, including a subcontractor, notifies the applicable NASA contracting officer in writing in accordance with paragraph (c) of this clause; or

(3) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

(e) *Subcontracts*. The covered contractor shall insert this clause, including this paragraph (e), in subcontracts for (1) Electronic parts; (2) End items, components, parts, or assemblies containing electronic parts; or (3) Services where the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer. The covered contractor shall not alter the clause other than to identify appropriate parties.

(f) *Corrective Action*. In the event that the covered contractor supplies a counterfeit electronic part, suspect counterfeit electronic part or end item, component, or assembly containing a counterfeit electronic part to NASA, the covered contractor shall take such corrective actions as the Administrator considers necessary to remedy the use or inclusion of additional counterfeit electronic parts, suspect counterfeit electronic part or end items, components, or assemblies containing a counterfeit electronic part.

(END OF CLAUSE)

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