

Anti-Counterfeiting – DFARS Final Rule

The U.S. Department of Defense published in the August 2, 2016, *Federal Register*, its final Defense Federal Acquisition Regulation Supplement (DFARS) that addresses required sources of electronic parts for defense contractors and subcontractors. The final rule provides further clarification of earlier DFARS implementing the anti-counterfeiting provisions contained in the National Defense Authorization Acts (NDAA) of FY 2012 and FY 2015. [Click here](#) for a copy of final rule.

ECIA is pleased to announce that the final rule incorporates many of the suggested changes recommended by the association. ECIA submitted comments in response to the proposed rule (DFARS Case 2014-D005) focused on five main areas: 1) use and definition of the terms “authorized dealer” and 2) “trusted supplier;” 3) procurement policy; 4) traceability; and 5) flow down requirements. The association was successful in each of these areas as follows:

1. The term “authorized dealer” was deleted and replaced with the term “authorized supplier.” Authorized supplier means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell or distribute the part.
2. The term “trusted supplier” was deleted and replaced with the term “contractor-approved supplier.” Contractor-approved supplier means a supplier that does not have a contractual agreement with the original component manufacturer for a transaction, but has been identified as trustworthy by a contractor or subcontractor. **(Note—see**
3. The rule establishes a strict, three-tiered approach to the procurement of electronics parts:
 - o Category 1—for parts in production or currently available in stock: Contractors must obtain such parts from the original manufacturer, their authorized suppliers, or from suppliers that obtain such parts exclusively from the original manufacturer of the parts or their authorized suppliers. **(Note—**The comments section of the rule states: “...even if there is a demonstrated need for a part in production with a lead time, contractors do not have the option to seek the part from other than a Category 1 source.) “In production” also includes production by an authorized aftermarket manufacturer.
 - o Category 2—for parts not in production and not currently available in stock: Contractors may obtain these parts from suppliers identified by contractor as contractor-approved suppliers. For parts obtained from a Category 2 supplier, the contractor must:
 - § Assess the supplier using established counterfeiting prevention industry standards and processes (including inspection, testing and authentication) and
 - § Assume responsibility for the authenticity of the parts and
 - § Be subject to review and audit by the DoD contracting officer.

- o Category 3—for parts not available from Category 1 and 2 suppliers or a subcontractor refuses to accept the flow-down requirements for the part or cannot confirm that the part is new or commingled with parts that are not new:
 - § Immediately notify the contracting officer and
 - § Be responsible for inspection, testing, and authentication in accordance with industry standards and
 - § Make documentation of inspection, testing, and authentication available upon request.
- 4. The rule provides that the contractor is responsible for inspection, testing and authentication if the contractor cannot establish traceability from the original manufacturer for a specific part.
- 5. The rule clarifies that the flow-down requirements do not apply to the original component manufacturer.

The rule is clear that all DoD contractors and subcontractors at all tiers are responsible for detecting and avoiding counterfeit electronic parts. The DoD also determined that commercial items (COTS) are not exempt from the applicability of this rule.

The final rule is a clear affirmation by the DoD of the importance of procuring parts from authorized sources. It reflects the years of effort by NEDA, and subsequently by ECIA, to promote the advantages of the authorized supply chain.