

Let the Seller Beware – NASA’s Proposed Rule Seeks to Limit the Presence of Counterfeit Electronic Parts

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On January 7, 2020, the National Aeronautics and Space Administration (“NASA”) published a [proposed rule](#) seeking to amend the NASA Federal Regulation Supplement regarding counterfeit electronic parts. The proposed rule would add new language to the NASA regulations, requiring that contractors procure electronic parts directly from manufacturers and select suppliers in an effort to lessen the use of counterfeit electronics on NASA programs.

Specifically, the proposed rule would require “covered contractors and subcontractors at all tiers” to purchase electronic parts currently in production, and that are from:

1. the original manufacturers of the parts,
2. the manufacturers’ authorized dealers, or
3. suppliers “who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.”

For parts not currently in production, or if a contractor opts not to purchase electronic parts as described above, contractors must purchase the parts from either a NASA-identified or contractor-approved supplier. However, if the latter option is chosen, the contractor will “assume responsibility and be required to inspect, test, and validate the authentication of the parts.” Further, selection of a “contractor-approved” supplier will be subject to review and audit by the contracting officer. Notably, these changes will apply to “all procurements involving electronic parts, end items, components, parts, or assemblies containing electronic parts or services,” if such are to be supplied as part of the service.

The proposed rule seeks to implement Section 823(c)(2)(B) of the 2017 NASA Transition Authorization Act, [Pub. L. 115-10](#), which cited a 2012 Congressional Committee on Armed Services investigation that discovered more than 1,800 instances of counterfeit parts being used in the Department of Defense’s supply chain, totaling over 1,000,000 counterfeit parts. According to the

Act, “the presence of counterfeit electronic parts in the NASA supply chain poses a danger to the United States government astronauts, crew, and other personnel and a risk to the agency overall.” NASA was thus tasked with revising the NASA regulations “to improve the detection and avoidance of counterfeit electronic parts in the supply chain.” The proposed rule further recognizes at least one known instance of a suspected counterfeit part in the last 17 years.

NASA’s proposed rule echoes many requirements contractors currently face when selling to the Department of Defense under DFARS 252.246-7007 (Contractor Counterfeit Electronic Part Detection and Avoidance System) and 252.246-7008 (Sources of Electronic Parts). However, unlike the DFARS counterpart, the NASA proposed rule would not require a contractor to implement an electronic part detection and avoidance system. At least not yet. Ironically, the DFARS rules started out in 2014 as requiring only a counterfeit electronic part detection and avoidance system, but evolved in 2016 to require the broader DOD supply chain restrictions now in place. The NASA requirements may evolve over time, as well.

Contractors also may recall the FAR Council issued a [final rule](#) in November 2019 requiring contractors to report suspected counterfeit electronic parts to the Government-Industry Data Exchange Program (GIDEP). However, NASA’s proposed rule decidedly differs from its FAR counterpart. See *also* FAR 52.246-26 (Reporting Nonconforming Items).

Here are some of the key differences:

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Contractors doing business with NASA are well-advised to continue closely monitoring these additional proposed counterfeit parts requirements, and ensuring that products purchased through the supply chain continue to match these evolving obligations. Comments on the proposed rule are due March 9, 2020.

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