

19 public health emergency by devoting significant resources to that end, the work needed on the IPF PPS final rule was not completed in accordance with our usual rulemaking schedule. We noted that it is critical, however, to ensure that the IPF PPS payment policies are effective on the first day of the fiscal year to which they are intended to apply and therefore, it would be contrary to the public interest to not waive the 60-day delay in the effective date. Undertaking further notice and comment procedures to incorporate the corrections in this document into the FY 2021 IPF PPS final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest to ensure that the policies finalized in the FY 2021 IPF PPS are effective as of the first day of the fiscal year to ensure providers and suppliers receive timely and appropriate payments. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies. Rather, the correction we are making is only to indicate that the FY 2021 IPF PPS final rule is economically significant and a major rule under the CRA. For these reasons, we find we have good cause to waive the notice and comment and effective date requirements.

#### IV. Correction of Errors in the Preamble

In FR Doc. 2020–16990, appearing on page 47042 in the **Federal Register** of Tuesday, August 4, 2020, the following correction is made:

1. On page 47064, in the 3rd column, under B. Overall Impact, correct the third full paragraph to read as follows:

We estimate that the total impact of this final rule is very close to the \$100 million threshold. The Office of Management and Budget has designated this rule as economically significant under E.O. 12866 and a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

Dated: August 24, 2020.

**Wilma M. Robinson,**

*Deputy Executive Secretary to the  
Department, Department of Health and  
Human Services.*

[FR Doc. 2020–18902 Filed 8–26–20; 8:45 am]

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1812, 1831, 1846, and  
1852**

**RIN 2700–AE38**

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

**AGENCY:** National Aeronautics and  
Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is finalizing a revision to the NASA Federal Acquisition Regulation Supplement (NFS) requiring 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. These changes implement section 823(c)(2)(B) of Public Law 115–10, the National Aeronautics and Space Administration Transition Authorization Act of 2017.

**DATES:** This rule is effective September 28, 2020.

**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. Overview of the Rule**

This rule implements section 823(c)(2)(B) of Public Law 115–10, the National Aeronautics and Space Administration Transition Authorization Act of 2017. It revises 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 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 discussed 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 is also 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.

NASA's final rule is a separate but companion action to the FAR Council rule on Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (GIDEP) (FAR Case 2013–002) published at 84 FR 64680. While both rules pertain to the topic of counterfeit parts and suspected counterfeit parts, there are discernable differences as they are implementing separate acts. These differences are discussed below.

#### *Scope*

While both the FAR and the NFS rule pertain to the topic of counterfeit parts and suspected counterfeit parts, the FAR has a broader application in the types of items covered. It is applicable to all items 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 covers acquisitions that exceed 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 the NFS rule applies only to electronic parts for use in a safety or mission critical applications.

#### *Reporting/Notification*

The FAR requires two reporting requirements which are cleared under OMB Control number 9000–0187 titled Reporting of Nonconforming Items to the Government-Industry Data Exchange Program—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 it 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.

#### *Allowability of Costs*

As required by statute this 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 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 statute 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 does not address sources of items.

#### *Applicability—Commercial/COTS and SAT*

Section 823 does not provide for any exemptions. As required by statute, this NFS rule applies to any electronic part or products that contain electronic parts, which includes commercial items, including COTS items, and contracts at or below the SAT. The associated final FAR rule is not applicable to commercial items or commercially off the shelf items; additionally, it does not apply to contracts and subcontracts at or below the simplified acquisition threshold.

## **II. Summary of Public Comments**

The proposed rule was published in the **Federal Register** at 85 FR 663 on January 7, 2020 with five commenters submitting materials. In several cases, commenters requested changes to definitions that did not align with definitions provided in the National Aeronautics and Space Administration Transition Authorization Act and were therefore not taken. Two commenters merely affirmed the proposed rule text with no suggested changes. While no changes were made to the final rule in response to public comment, NASA's analysis and response to all other comments are discussed below.

One commenter suggested adding a requirement to electronically verify if a product was purchased from *eBay.com* or *amazon.com*. NASA notes no changes are necessary to the rule based on this comment because if the process outlined in the rule is followed, purchases from these sources will be captured without any additional verification required. Additionally, the selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

A commenter recommended requiring covered procuring parts that are not in production or available in stock to inspect & test the parts consistent with published industry standards, including reliability testing and apply additional standards and higher testing requirements to those parts to mitigate the risk. Additionally, the commenter requested clarification for the phrase "in production" in 1846.7002 and 1852.246-74 specifically, when a manufacturer, authorized distributor, or authorized aftermarket manufacturer has stock of a semiconductor in wafer or die form, that it be considered to be "in production." Lastly, the commenter recommend "electronic parts" be amended to match the definition outlined 48 CFR 252.246-7008(a).

This rule uses the language and definitions as provided by the 2017 NASA Transition Authorization Act so no changes are made to the definitions. NASA believes no additional changes are necessary because if the process outlined in the rule is followed, the contractor must obtain traceability information for the electronic parts (e.g., data code, lot code, serial number) and provide the information to the contracting officer upon request. In addition, for unique contract requirements that involve electronic parts that are not in production, NASA contractors are subject to NASA internal validation which include researching part availability from suppliers that

meet the defined criteria, and researching supplier quality histories in the GIDEP database, NASA-internal supplier quality databases, part inspection and failure databases, open sources of supplier information indicating areas of risk, project nonconformance and risk databases, as well as other subscription-based databases that are designed for sharing insight about counterfeit risks in the supply chain. Also, NASA Headquarters' Office of Safety and Mission Assurance executes audits of Centers' and Projects' adherence to quality policies on a rotating basis and can instigate special audits when needed to discern conformance issues and risks.

A commenter wanted to know how NASA will maintain this NASA-identified supplier list.

As discussed elsewhere in the rule, NASA-identified suppliers will be identified on a case-by-case basis, using internal counterfeit avoidance and contractor validation processes, in lieu of maintaining a list.

A commenter wanted to know how NASA will mitigate risks for parts provided by a NASA-identified supplier.

The Agency-identified suppliers will be compliant with and validated using the policies and procedures discussed in this rule as well as NASA's standard quality assurance and counterfeit avoidance policies and procedures and supplier validation practices as described elsewhere in the rule.

A commenter wanted to know will NASA be accountable for corrective actions on identified suppliers.

As discussed in the rule costs related to corrective action to remedy the use or inclusion of counterfeit electronic parts are allowable costs for covered contractors, including NASA-identified contractors, that: (a) Have a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts and (b) whose system has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303.

A commenter wanted to know what NASA's validation process be for their identified suppliers.

The Agency's validation process actively pursues objective evidence of part and part supplier suitability throughout design, procurement, and product acceptance which provides the technical authority and risk management systems continuous/real-time awareness of conformance with NASA's standard quality assurance and counterfeit avoidance policies and procedures. Validation practices include

researching part availability, supplier quality histories in the GIDEP database, NASA-internal supplier quality databases, part inspection and failure databases, open sources of supplier information indicating areas of risk, project nonconformance and risk databases, as well as other subscription-based databases that are designed for sharing insight about counterfeit risks in the supply chain.

A commenter recommended the final rule clarify how “mission critical” and “safety” applications will be identified.

Section 823 cites the presence of counterfeit electronic parts in the supply chain as “a danger to the United States government astronauts, crew, and other personnel and a risk to the agency overall” as such, each unique contract requirement for electronic parts will be subject to the requirements of this rule 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.

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

This rule implements section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10). 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, 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and therefore was not 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.

**VI. Executive Order 13771.**

This rule is not subject to the requirements of E.O. 13771 because this rule is not significant under E.O. 12866.

**VII. Regulatory Flexibility Act**

No comments were received on NASA’s initial analysis and the Final Regulatory Flexibility Analysis (FRFA) is summarized below.

The rule will apply to all “covered contractors.” Covered contractors, as

defined by Public Law 115–10 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 all of 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

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 final 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 Contracting Officer.

### VIII. Paperwork Reduction Act

This 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.

#### 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, 48 CFR parts 1812, 1831, 1846, and 1852 are amended as follows:

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

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

### PART 1812—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 1812.301 by redesignating paragraph (f)(i)(T) as paragraph (f)(i)(U) and adding a new paragraph (f)(i)(T) to read 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.

(U) 1852.247.71, Protection of the Florida Manatee.

### PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Add section 1831.205–71 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).

(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; 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 to read as follows:

#### Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance.

Sec.

1846.7000 Scope of subpart.

1846.7001 Definitions.

1846.7002 Policy.

1846.7003 Contract clause.

#### 1846.7000 Scope of subpart.

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10).

(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.

“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 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, 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 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.

"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), 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), 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; 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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