

## SUPPORTING STATEMENT

### 0704-0541, Detection and Avoidance of Counterfeit Parts—Further Implementation

#### A. JUSTIFICATION

##### 1. Need for the Information Collection

This final rule (DFARS Case 2014-D005) is necessary to further implement paragraph (c) (3) of section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81), as amended by section 817 of the NDAA for FY 2015 (Pub. L. 113-291), which requires DoD to issue regulations establishing requirements that DoD contractors and subcontractors acquire electronic parts, except in limited circumstances, from trusted suppliers in order to further address the avoidance of counterfeit electronic parts. To implement paragraph (c)(3) of section 818, this rule provides a new clause at DFARS 252.246-70XX, Sources of Electronic Parts, that is prescribed for use in contracts and solicitations when procuring electronic parts, items that contain electronic parts, or services where the contractors will be supplying electronic parts.

Paragraph (c)(3)(ii) of the clause at DFARS 252.246-70XX, requires DoD contractors and subcontractors that are not the original manufacturer of or an authorized supplier for an electronic part to make available to the Government, upon request, the following:

- a. Documentation of traceability from the original manufacturer of electronic parts; or
- b. When traceability of electronic parts cannot be established, documentation of the inspection, testing, and authentication performed in accordance with industry standards.

In addition, in accordance with paragraph (b)(3)(ii) of the clause, DoD contractors and subcontractors are required to promptly notify the contracting officer in writing and make available, upon request, documentation of inspection, testing and acceptance of an electronic part, if the contractor or subcontractor is unable to—

- a. Obtain an electronic part that is—
  - i. In production by the original manufacturer or an authorized aftermarket manufacturer;
  - ii. Currently available in stock from the original manufacturer, an authorized supplier, or a supplier who obtain such parts exclusively from the original manufacturer or an authorized supplier of those parts; or
  - iii. From a contractor-approved supplier where the contractor assumes responsibility for the authenticity of the part; or

- b. Confirm that an electronic part is new or not previously used and that it has not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts.

## 2. Use of the Information

The notification and documentation requirements described in section 1 of this supporting statement are necessary to comply with the law. The contracting officer will use the information to ensure that the contractor performs the additional inspection, testing, and authentication required when an electronic part is not obtained from a trusted supplier. The Government may also use this information to more actively perform acceptance.

## 3. Use of Information Technology

Information technology has been applied to the maximum extent possible. The contracting officer is not prevented from accepting any requested compliance plans electronically.

## 4. Non-duplication

As a matter of policy, DoD reviews the Federal Acquisition Regulation (FAR) to determine whether adequate language already exists. This rule implements a DoD-unique statute and is not duplicative of language in the FAR. Similar information is not otherwise available to the contracting officer.

## 5. Burden on Small Business

The collection of information is not expected to have a significant impact on a substantial number of small entities.

## 6. Less Frequent Collection

Contractors will only make documentation regarding traceability and inspection, testing, and authentication, upon request by the Government. In addition, the contractor is only required to notify the contracting officer if the contractor is *unable* to buy an electronic part from a trusted supplier. Also, if such notification is required for an electronic part to be used in a designated lot of assemblies to be acquired under a single contract, the Contractor may submit one notification for the lot, providing identification of the assemblies containing the parts.

## 7. Paperwork Reduction Act Guidelines

Collection is consistent with guidelines in 5 CFR 1320.5(d)(2).

## 8. Consultation and Public Comments

a. Public comments were solicited on the proposed rule (DFARS Case 2014-D005) in the Federal Register on September 21, 2015, ([80 FR 56939](#)), as required by 5 CFR 1320.8(d).

b. Eighteen respondents submitted comments in response to the proposed rule and several of the respondents provided comments on the information collection requirements stated within the proposed rule. The respondent's comments and DoD's responses on the information collection requirements are addressed in the Federal Register notice for the DFARS final rule (XX FR XXXXX) as follows:

Comment: One respondent expressed detailed concerns about the necessity and practical utility of the proposed rule. The respondent was concerned about significantly expanding contractors' tracking, collection, and reporting obligations. Subcontractors may not have such information readily available and may be reluctant to share this information up the supply chain. The respondent also had serious concerns about security and protection of the information. The respondent encouraged DoD to consider whether it is necessary to collect all this data at all tiers and to pass the data up through the supply chain to the Government, before any reportable instance of counterfeit or suspect counterfeit electronic parts.

The respondent also believed that DoD may already have access to a lot of this data, because DoD has access to databases of thousands of suppliers that provide parts to its acquisition system. The respondent considered that the handful of additional suppliers that may be identified will not provide much return on investment.

Response: The only definite reporting requirement in the rule is to provide notification to the Government if using a Category 3 supplier. This notification is a statutory requirement. Documentation on traceability or inspection, testing, and validation need only be provided to the Government upon request. This approach is considered necessary by subject matter experts within DoD to implement the statutory requirement and to detect and avoid counterfeit parts within the supply chain.

Comment: One respondent did not believe that the Government estimated collection time and costs capture all that contractors must do to comply.

- Hours per response (1 hour per response): Appears to assume that all information is already in a database or otherwise easily accessible and that a single person at a single facility will be able to generate such a report.

- Frequency of report (1 per year): The proposed rule requires that contractors must notify the contracting officer when they cannot obtain covered parts from a trusted supplier in each instance, or at least on a lot basis. This requirement is event-driven, potentially arising on multiple occasions during any given year.

- Number of respondents (1,000): In view of the statement in the Federal register that the rule will cover 33,000 small entities in addition to the large CAS-covered businesses, the respondent considers the estimate of 1,000 respondents too low

Another respondent suggested that the information collection portion of the proposed rule be re-estimated to reflect the suggested flowdown requirements to create a more accurate assessment of the true costs of the rule.

Response: The estimated information collection burden in the proposed rule related only to the required notification when using other than a “trusted supplier.” This should be quite rare, since it only occurs when an item is out of production, not currently available in stock, and not available from a contractor-approved supplier. However, the estimates have been adjusted to acknowledge that in many cases information for such notification may have to be provided by a lower tier subcontractor to the prime contractor.

In addition, the final rule makes explicit the requirement to maintain documentation with regard to traceability or inspection, testing and authentication and make the documentation available upon request. This is not an added burden for contractors and subcontractors but an acknowledgement of a burden that was implicit in the proposed rule. These requirements have been calculated for subcontractors, as well as prime contractors. The final information collection requirement estimates are summarized as follows:

Requirement	Respondents	Responses	Total Reporting Hours	Annual Reporting Burden
252.246-70XX (c)(3)(ii)	5,049	50,490	41,310	\$1,900,260
252.246-70XX (b)(3)(ii)	1,575	2,550	2,550	\$117,300
Total Reporting Burden	6,624	53,040	43,860	\$2,017,560
Recordkeeping	Recordkeepers	Recordkeeping Hours	Annual Recordkeeping Burden	
252.246-70XX	78,773	2,363,190	\$75,622,080	

Comment: The respondent urged reconsideration not only of the estimate of the burdens, but consideration of how the rule might be revised so as to reduce the burdens on industry and the Government.

Response: DoD has not been able to identify a viable alternative that would meet the objectives of the rule and comply with the statutory requirements. The notification requirement is statutory. The data on traceability or inspection, testing, and validation need only be provided to the Government upon request.

Comment: One respondent asked for the elimination of the requirement for information collection concerning detection and avoidance of counterfeit electronic parts for products regulated by the FDA.

Response: This rule implements section 818 of the NDAA for FY 2012, as amended by section 817 of the NDAA for FY 2015, and prescribes the policy and procedures for preventing

counterfeit electronic parts from entering the supply chain. This rule addresses concerns that DoD has encountered regarding the electronic parts, including those that are COTS items, and including medical devices. DoD recognizes the FDA’s authority over drugs and medical devices. DoD recognizes that manufacturers are required to have processes in place to review, investigate, and evaluate external manufacturers and suppliers. However, DoD has a responsibility to protect the warfighter by ensuring that we are utilizing electronic products that are not counterfeit or contain counterfeit parts.

9. Gifts or Payment

No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Confidentiality

This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Sensitive Questions

No sensitive questions are involved.

12. Respondent Burden, and its Labor Costs

a. Estimation of Respondent Burden

The estimated cost to the public is based on Federal Procurement Data System data for FY 2013 and in response to public comments received on the proposed rule.

Estimation of Burden Hours: 252.246-70XX - Reporting	
Number of respondents	6,624
Responses per respondent (approximately)	8.01
Number of responses	53,040
Hours per response (approximately)	.83
Estimated hours	43,860
Cost per hour (hourly wage)	\$46
Annual public burden (reporting)	\$2,017,560

Estimation of Burden Hours: 252.246-70XX - Recordkeeping	
Number of respondents	6,624
Responses per respondent (approximately)	11.89

Number of recordkeepers	78,773
Hours per recordkeeper (approximately)	30
Estimated hours (number of recordkeepers times hours per response)	2,363,190
Cost per hour (hourly wage)	\$32
Annual public burden (recordkeeping)	\$75,622,080

Estimation of Burden Hours: 252.246-70XX – Total Reporting + Recordkeeping	
Number of respondents	6,624
Responses per respondent (approximately)	20
Number of responses	131,813
Hours per response (approximately)	18
Total estimated hours (reporting and recordkeeping)	2,407,050
Cost per hour (hourly wage) (approximately)	\$32
Total annual public burden (estimated hours multiplied by cost per hour)	\$77,639,640

13. Respondent Costs Other Than Burden Hour Costs

There are no capital, start-up costs, or operation and maintenance costs associated with this collection.

14. Cost to the Federal Government

The annualized costs estimated to be incurred by the Federal Government in collecting and processing the information collected, follows:

Estimation of Cost to the Government - Respondent Burden Hours: 252.246-70XX	
Number of responses	53,040
Hours per response (approximately)	10
Estimated hours (number of responses multiplied hours per response)	530,400
Cost per hour (hourly wage) (approximately)	\$46
Annual public burden (estimated hours multiplied by cost per hour)	\$24,398,400

15. Reasons for Change in Burden

This submission requests a new OMB approval for an information collection requirement in the DFARS.

16. Publication of Results

Results will not be tabulated or published.

17. Non-Display of OMB Expiration Date

DoD does not seek approval not to display the expiration date for OMB approval of the information collection.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods will not be employed.