

Advocacy Urges DOD to Seek Reasonable Alternatives for Small Business Compliance with the Electronic Counterfeit Regulation

On September 21, 2015, DOD published a proposed regulation to require contractors to curtail the flow of counterfeit electronic parts in DOD contracts.

The proposed rule is to implement section 818 of the National Defense Authorization Act for Fiscal Year 2012, as modified by section 817 of the National Defense Authorization Act for Fiscal Year 2015. The proposed rule will cover all contractors, small businesses and small business sub-contractors. The proposed rule removes the exemption, for the first time, for contractors who provide Commercially Off the Shelf (COTS) electronic parts. The proposed rule creates two levels for small businesses to acquire electronic parts. Parts that are in production must be obtained from the original manufacturer or their authorized dealers. Parts that are not in production can be obtained from trusted suppliers provided that the contractor uses established counterfeit prevention industry standards and processes, including testing, for identifying trusted suppliers for the authenticity of the parts. The proposed rule will require the creation of a traceability system to follow the electronic parts from the manufacturer to being ultimately accepted by the contracting officer.

- The Office of Advocacy wrote DOD on November 20, 2015, regarding the proposed regulation and recommended extending the comment period and urged DOD to explore reasonable alternatives for small businesses to comply with what would appear to be an economically significant rule that will have an impact on a substantial number of small businesses.
- Advocacy would further like DOD to reexamine and recalculate the number of small businesses that will be impacted by the rule. The Initial Regulatory Flexibility Analysis (IRFA) does not discuss the number of small business subcontractors. The IRFA also does not provide clear data as to the impact of the removing, for the first time, the compliance exemption for small businesses that provide COTS parts.

For more information, visit Advocacy's webpage at <https://www.sba.gov/advocacy/11-20-2015-proposed-dfars-regulation-implement-detection-and-avoidance-counterfeit> contact Major Clark at 202-205-7150 or major.clark@sba.gov.