

CLIENT ALERT

Enhanced Requirement to Report Counterfeit, Suspect Counterfeit, and Nonconforming Goods

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In an effort to further harden the critical-to-mission component supply chain, a [new FAR clause published November 22](#) finalizes a FAR provision that dramatically expands the mandatory reporting of counterfeit and certain nonconforming parts to the Government-Industry Data Exchange Program (GIDEP) and, in some instances, the relevant contracting officer. Although DFARS 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, requires GIDEP reporting, the clause is narrowly tailored to defense contractors and to counterfeit electronic parts only. The new FAR rule expands GIDEP reporting to all contractors, to non-electronic counterfeit and suspect counterfeit parts, and to other nonconformances.

At a high level, the clause will be included in procurements conducted by any agency—including the DoD—for: (1) items subject to FAR clause 52.246-11, Higher-Level Contract Quality Requirement; (2) items identified by the contracting officer as critical items; (3) electronic parts and end items, components, parts or assemblies containing electronic parts; and (4) services where the contractor will furnish, as part of the service, any of items (1)-(3). The new reporting obligations will be triggered by a contractor or subcontractor's identification of certain counterfeit and suspect counterfeit goods, as well as and goods with major nonconformances (defined as those likely to result in failure of the supplies or materially reduce usability) or critical nonconformances (defined as those likely to result in hazardous or unsafe conditions or prevent performance of a vital mission). The final rule is more narrow in scope than the proposed rule released [in 2014](#). Specifically, unlike the proposed rule, the final rule explicitly excludes procurements for commercial items, medical devices subject to FDA reporting, and commercially-available off-the-shelf items.

Additionally, contractors are now required to review the GIDEP database so they may be able to investigate and remove suspect parts from the supply chain. In response to questions about this process, the Government has recommended using Batch Match to monitor for any references to components or parts of interest. Contractors should be prepared in the coming month to review and revise their existing counterfeit parts programs or establish a counterfeit parts program to comply with the new rule. The new rule will go into effect on December 23, 2019.

We will be conducting a webinar on December 17 to discuss this rule and its implications. More detail about the webinar to follow.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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