



Counterfeit Parts in DoD's Supply Chain: Overview of Section 818 of 2012 NDAA

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What is the problem?

- Components and systems entering the DoD supply chain contain counterfeit parts that make it impossible to predict when or how the systems may fail.
- The failure or threat of failure due to counterfeit parts reduces reliability of weapons and systems.
- Reliance on potentially compromised systems risks loss of life and property and may cause mission failure.
- The incentives for counterfeiters and the often faceless global nature of the supply chain for electronic parts makes fixing the problem difficult.
- Supply chain integrity is necessary, but expensive.

Counterfeit Parts Awareness Timeline

- 2008
 - INSIDE THE AIR FORCE
 - BUSINESS WEEK
 - DoJ Prosecutions
 - PRO IP Act
- 2009
 - NASA comments to HEC
 - DoJ Prosecutions
- 2010
 - Dept. of Commerce, BIS Study
 - IPEC Working Group Formed
 - Boeing/L-3/Raytheon
- 2011
 - GAO Report: DoD Leverage
 - DoJ Prosecutions
- 2011
 - Dept. of Commerce, Survey of telecom company hardware
 - DoD MIBP S2T2 Review
 - SASC Investigation & Hearing
 - 2012 NDAA
- 2012
 - GAO Report: Internet Fakes
 - AT&L “Overarching” Memo
 - Deadlines for DoD Action
 - June 28, 2012
 - September 26, 2012

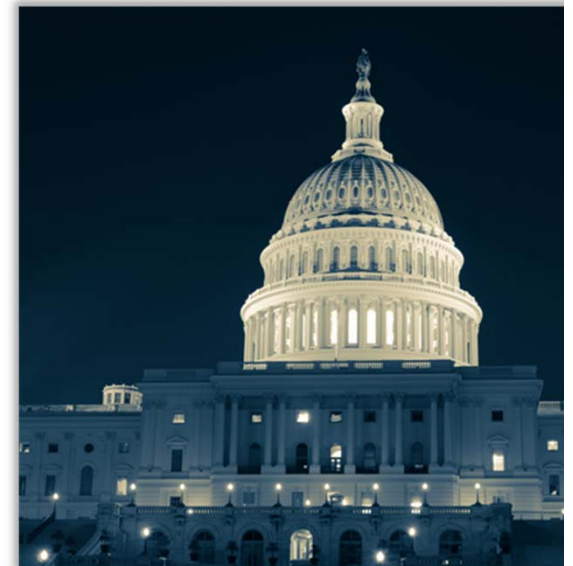
What has Congress done to date to address the problem?

- Pro-IP Act formed IPEC Working Group
- Section 806 of 2011 NDAA
- SASC Investigation and Hearing on Counterfeit Electronic Parts in Military Equipment
- Section 818 of 2012 NDAA

SASC Hearing and Legislative History

- Feb - Nov 2011 SASC Investigation
- Nov 8 SASC Hearing
 - DoD, MDA & GAO
 - Boeing/L-3/Raytheon
 - SIA/SMT Corp.
- Nov 17, S. 1092 introduced
- Nov 29, S. 1092 passed
- 2012 NDAA signed Dec 31, 2011

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What the law requires (DoD internal)

- Define “counterfeit electronic part” and “suspect counterfeit electronic part”
- Implement a risk-based approach for DoD procurement personnel to minimize impact of counterfeit electronic parts
- Issue or revise guidance to recommend suspension and debarment for lack of supply chain integrity
- Establish a system for reporting counterfeit parts
- Develop a process to act on such reports

What the law requires (DoD and Contractors)

- Whenever possible DoD and contractors shall obtain parts from OEMs, authorized dealers or “trusted suppliers”
- When parts are no longer available, they must be obtained from “trusted suppliers”
- If not possible, contractor must notify DoD and parts must be inspected, tested and authenticated
- DoD must establish qualification requirements to identify trusted suppliers and contractors may identify their own
- Contractor trusted supplier programs must be consistent with industry standards, subject to DoD audit and contractors “assume the responsibility”

What the law requires (Contractors)

- Responsible for detecting and avoiding counterfeit electronic parts and all costs of any associated rework or corrective action
- With knowledge of or reason to suspect counterfeit electronic parts, must give written notice to government authorities and GIDEP w/in 60 days
- Immune from civil liability for reporting after a “reasonable effort” to determine whether counterfeit
- Must establish policies and procedures to “eliminate” counterfeit electronic parts

What the law requires (Contractor Systems)

- Need to address specific areas:
 - Train personnel
 - Inspect and test electronic parts
 - “Abolish counterfeit parts proliferation”
 - Enable parts traceability
 - Use trusted suppliers
 - Report and quarantine counterfeit (and suspect) parts
 - Identify and rapidly confirm or deny suspect counterfeit parts
 - Design, operate and maintain systems to detect and avoid counterfeit (and suspect) parts
 - Flow down detection and avoidance requirements
- DoD must approve or disapprove like business systems rule

What regulations are in play?

- Proposed DFARS
- Proposed FAR
- CAS
- Changes (Fixed & Reimbursable)
- Others?

What are DOD, contractors and suppliers doing?

- DoD
 - DLA questionnaire
 - DUSD Kendall 3.16.12 Memo – “Overarching DoD Counterfeit Prevention Guidance”
 - “Cooperative” Working Group
- Contractors
 - Develop/Review Policy and Procedure to detect and avoid
 - Monitor and seek to participate in rulemaking
- Suppliers
 - AS 5553 Standard (or others)

How can DoD minimize DIB impacts?

- Dialogue with industry – notice and comment
- Cost benefit analysis and risk-based approach
- Provide safe harbor when contractor has implemented and maintained a robust system
- Draw the proper line between detection and avoidance inspections (allowable costs) and corrective action or rework (unallowable costs)
- Account for supply chain integrity in procurements – low cost is counter-productive

What does this have to do with our committee?

- Acquisition Reform & Emerging Issues
- Strategic Alliances, Teaming, Subcontracting
- Commercial Products and Services
- Cybersecurity, Privacy and Data Protection
- Procurement Fraud
- Others
 - Accounting Cost and Pricing
 - Claims and Disputes
 - Debarment and Suspension
 - IT Procurement
 - Regulatory Coordinating
 - Small Business & Other Socioeconomic Programs

Some questions to consider

- How prescriptive will or should the rule be?
- How long will contractors have to implement?
- Who in DoD can or will audit compliance?
- Can and will DoD engineer out obsolescence?
- Can one rule fit the entire supply chain?
- Will the rule be influenced by DoJ?
- How does the rule interact with Section 806?