

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0187, Reporting of Nonconforming Items to the
Government-Industry Data Exchange Program**

A. Justification.

1. Administrative requirements. Counterfeiting affects governments, businesses, and consumers throughout the supply chain. Growing concerns regarding counterfeit parts led to the enactment of section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012, Pub.L. 112-81, 10 U.S.C. 2302 Note, requiring regulations regarding the definition, prevention, detection, and reporting of actual or suspected counterfeit electronic parts in the Government-Industry Data Exchange Program (GIDEP) system. While section 818 was directed specifically at the reporting of counterfeit or suspect counterfeit electronic parts by Department of Defense (DoD) contractors and subcontractors, the problem of nonconforming and counterfeit parts continues to be significant across the Federal Government. Therefore, the final rule and associated information collection requirement will impact all Federal agencies. The goal of reporting counterfeit and suspect counterfeit items and common items that have a critical or major nonconformance into GIDEP is to avoid, detect, and address nonconforming or counterfeit parts in the supply chain.

2. Uses of information. This information will be used by the Government to address and detect nonconforming and counterfeit items. Perhaps more important, this information will be available to businesses for searching prior to placing orders, thus enabling the avoidance of purchasing counterfeit items in the first place.

3. Consideration of information technology. Information technology has been applied to the maximum extent possible. GIDEP uses standardized electronic forms to report into the system. The contractor is not prohibited from notifying the contracting officer electronically.

4. Efforts to identify duplication. This requirement is being issued under the Federal Acquisition Regulation (FAR), which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small businesses is the minimum consistent with applicable laws, executive orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. This information is required within 60 days of becoming aware through inspection or testing that an item is counterfeit, suspect counterfeit, or a common item that has a major or critical nonconformance. If the information were collected less frequently, it would allow the proliferation of such parts in the supply chain and could result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or prevent performance of a vital agency mission.

7. Special circumstances for collection. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. Under the procedures established for development of the FAR, agency and public comments were solicited and each comment addressed before finalization of the text. A notice was published in the *Federal Register* at 79 FR 33164, on June 10, 2014. Fourteen responses on the proposed rule were received, of which 4 respondents provided comments on the estimates in the information collection requirement, as addressed in the preamble of the Federal Register notice that published the proposed rule.

Various respondents commented on the estimate of the information collection requirement in the preamble to the proposed rule.

Several respondents stated that the burden is currently underestimated. According to one respondent, the estimate of 474,000 reports underestimates the potential burden of the expanded reporting requirements because it failed to account for the growth in GIDEP reporting entities and relies on the number of companies currently participating in GIDEP.

Various respondents commented that 3 hours per report was substantially underestimated. One respondent noted that any incident must be identified, investigated, and reported. Procedures need to be followed, individuals with expertise

need to be consulted, tests need to be performed and reports to memorialize findings of the review need to be prepared and filed. Another respondent noted that a single report can take up to 100 hours to complete, including significant legal review. Another respondent commented that the "very low estimate" seems to ignore the significant time and costs associated with training, implementation, and the risks of liability.

DoD, GSA, and NASA have completely revised the estimated number of reports per year because the rule has been significantly de-scoped and data was also reviewed regarding the current number of participating contractors and the current number of reports submitted, resulting in an estimate of 51,657 participating contractors submitting 5,166 reports per year.

Industry already has all the information necessary to prepare a GIDEP report, based on existing quality assurance systems and procedures. However, in response to the industry comments, DoD, GSA, and NASA have reconsidered the number of estimated hours to prepare, review, and submit the report at an average of 6 hours per report.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or guarantees. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved

12 & 13. Estimated total annual public hour and cost burden. The estimated cost to the public for reporting into GIDEP is as follows:

The total number of respondents potentially reporting into GIDEP is estimated at 51,657. This estimate is based on the following:

	52.246-11	Critical	DoD-Electronic-not commercial	Total contractors and subcontractors with clause
Prime-DoD (not electronic)	905		9,182	
Prime-civilian	3,619			
Total primes	4,524	452	9,182	
Subtotal	9,048	905	27,546	
Total	13,572	1,357	36,727	51,657
% report per year				.10
Reports to GIDEP per year				5,166

The clause FAR 52.246-XX, reporting Nonconforming Items, is prescribed in three circumstances:

(1) Items that are subject to higher-level quality standards in accordance with the clause at FAR 52.246-11, Higher-Level Contract Quality Requirement.

Data was only available for DoD usage of this clause. The clause was used in contracts with 3,619 unique vendors. DoD, GSA, and NASA estimated an equal number of unique awardees for civilian contracts (3,619). However, since there is a lot of overlap between this category and the category of DoD contracts and subcontracts for electronic parts, DoD, GSA, and NASA estimated that only 25 percent of DoD contracts using this clause do not involve electronic parts ($3619 \times .25 = 905$). Therefore, total unique prime contractors in this category = 4,524 ($3,619 + 905$). Because for other than DoD contracts involving electronic parts the clause only flows down if the subcontract involves higher level quality requirements or critical items, the calculations of unique subcontractors are based on an estimate average of two unique subcontractors per prime contract. Many subcontractors also have prime contracts, or subcontracts under other prime contracts.

(2) Items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate.

DoD, GSA, and NASA have estimated unique vendors of critical items in which the contract does not include the clause 52.246-11 as 10 percent of the unique vendors with contracts that do include FAR clause 52.246-11 ($4,524 \times .1 = 452$). Likewise, unique subcontractors for critical items that do not require higher level quality standards equals 905 ($9048 \times .1$).

(3) Electronic parts or end items, components, parts, or assemblies containing electronic parts, if this is an acquisition by, or for, the Department of Defense, as provided in paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81).

DFARS recently finalized DFARS clause 252.246-7008, Sources of Electronic Parts, which applies to all DoD acquisitions, when procuring electronic parts or end items, components, parts, or assemblies containing electronic parts. This is the same population covered by this FAR clause 52.246-XX, except that the FAR clause does not apply to acquisitions of commercial items at the prime contract level, and does not flow down to subcontracts for commercial items. Therefore, the estimates in this supporting statement are based on the numbers approved by OMB OIRA on September 30, 2016, under clearance 0704-0541, but those figures have been multiplied by .5 to adjust for inapplicability to commercial items, and the ratio of subcontracts to prime contracts has been reduced from 3.3 to 3, to adjust for exclusion of subcontracts for commercial items ($18,363 \times .5 = 9,182$ prime contractors $\times 3 = 27,546$ subcontractors).

Adding together total primes and subcontractors in all three categories results in an estimated total of 51,627 contractors and subcontractors with a potential obligation to report nonconforming parts to GIDEP. In fiscal year 2016 there were approximately 2,500 contractors participating voluntarily in GIDEP (out of 10,249 total participants), and 168 reports were submitted from industry. Based on this historical GIDEP data regarding number of reports by source received compared to number of contractors participating in GIDEP, while recognizing that reporting is now mandatory, DoD, GSA, and NASA estimate approximately 10 percent of the

participating contractors will submit a report in a particular year, i.e. 5,166 reports (51,657 x .1).

GIDEP Reporting Burden:

Number of respondents	5,166
Responses per respondent	<u>x 1</u>
Total annual responses	5,166
Hours per response ¹	<u>x 6*</u>
Total hours	30,996
Cost per hour	<u>x \$73.83**</u>
Total annual cost to respondents	\$2,288,434

* The hours per response consists of time to complete the GIDEP Alert/Safe Alert form (approx. 3 hour), have the form reviewed (approx. 2.75 hours) and approved and submit this form to GIDEP (approx .25 hours).

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Senior	\$73.83	2016 GS-14, Step 5 Base Pay + Rest of US Locality pay + Fringe*
*Fringe Rate	1.3625	OMB Memo M-08-13, dated March 11, 2008

It is estimated that the form will be completed by a high-level engineer and will be reviewed by a high-level administrative/attorney. Although predominantly at the senior level, this rate is a composite rate, with a mix of journeyman, senior, and executive/attorney rates.

14. Estimated cost to the Government. The time estimates are based on receiving, reviewing and analyzing the information submitted by the contractor.

The estimated cost to the Government for the compliance plan is as follows:

Total annual responses	5,166
Hours per response	<u>x 1</u>
Total hours	5,166
Cost per hour	<u>x \$52.54*</u>
Total annual estimate of burden	\$271,422

* Journeyman hourly rate (GS-12, step 5) of \$52.54

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15. **Explain reasons for program changes or adjustments reported in Item 13 or 14.** This submission requests a new OMB approval for an information collection requirement in the FAR.

16. **Outline plans for published results of information collections.** Results will not be tabulated or published.

17. **Approval not to display expiration date.** We do not seek approval not to display the expiration date for OMB approval of the information collection.

18. **Explanation of exception to certification statement.** There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.