

Submission of Federal Rules Under the Congressional Review Act

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 GAO

President of the Senate

Speaker of the House of Representatives

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency Department of Defense	2. Subdivision or Office OUSD(AT&L)DPAP(DAR)
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3. Rule Title
Quality Control of Aviation Critical Safety Items and Related Services

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)
DFARS Case 2003-D101

5. Major Rule Non-major Rule

6. Final Rule Other Interim Rule

7. With respect to this rule, did your agency solicit public comments? Yes No N/A

8. Priority of Regulation (fill in one)
 Economically Significant; or Significant; or Substantive, Nonsignificant
 Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)

9. Effective Date (if applicable) September 16, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached stated in rule

Submitted by:  (signature)

SEP 13 2004

Name: Deidre A. Lee

Title: Director, Defense Procurement and Acquisition Policy

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For Congressional Use Only:

Date Received: _____

Committee of Jurisdiction: _____

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 217, and 246

[DFARS Case 2003-D101]

Defense Federal Acquisition Regulation Supplement;
Quality Control of Aviation Critical Safety Items and Related
Services

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004. Section 802 requires DoD to establish a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

DATES: Effective date: [Date of publication in Federal Register].

Comment date: Comments on the interim rule should be submitted to the address shown below on or before [60 days after date of publication], to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D101, using any of the following methods:

- o Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

o Defense Acquisition Regulations Web Site:
<http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

o E-mail: dfars@osd.mil. Include DFARS Case 2003-D101 in the subject line of the message.

o Fax: Primary: (703) 602-7887; Alternate: (703) 602-0350.

o Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

o Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to
<http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602-0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Parts 209, 217, and 246 to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. This interim rule-

o Identifies the responsibilities of the head of the design

control activity for quality control of aviation critical safety items and related services; and

- o Specifies that DoD may enter into a contract for the procurement, modification, repair, or overhaul of an aviation critical safety item only with a source approved by the head of the design control activity.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to internal DoD responsibilities for ensuring quality control in the procurement of aviation critical safety items and related services. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D101.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under

44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 802 requires DoD to prescribe in regulations a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items. Section 802 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 209, 217, and 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209, 217, and 246 are amended as follows:

1. The authority citation for 48 CFR Parts 209, 217, and 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Sections 209.270 through 209.270-4 are added to read as follows:

209.270 Aviation critical safety items.

209.270-1 Scope.

This section-

(a) Implements Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136); and

(b) Prescribes policy and procedures for qualification requirements in the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

209.270-2 Definitions.

As used in this section-

Aviation critical safety item means a part, an assembly, installation equipment, launch equipment, recovery equipment, or support equipment for an aircraft or aviation weapon system if the part, assembly, or equipment contains a characteristic any failure, malfunction, or absence of which could cause-

(1) A catastrophic or critical failure resulting in the loss of or serious damage to the aircraft or weapon system;

(2) An unacceptable risk of personal injury or loss of life; or

(3) An uncommanded engine shutdown that jeopardizes safety.

Design control activity means the systems command of a military department that is specifically responsible for ensuring the air worthiness of an aviation system or equipment in which an

aviation critical safety item is to be used.

209.270-3 Policy.

(a) The head of the contracting activity for an aviation critical safety item may enter into a contract for the procurement, modification, repair, or overhaul of such an item only with a source approved by the head of the design control activity.

(b) The approval authorities specified in this section apply instead of those otherwise specified in FAR 9.202(a)(1), 9.202(c), or 9.206-1(c), for the procurement, modification, repair, and overhaul of aviation critical safety items.

209.270-4 Procedures.

For items identified as aviation critical safety items—

(a) The head of the design control activity shall—

(1) Approve qualification requirements in accordance with procedures established by the design control activity; and

(2) Qualify and identify aviation critical safety item suppliers and products.

(b) The contracting officer shall—

(1) Ensure that the head of the design control activity has determined that a prospective contractor or its product meets or can meet the established qualification standards before the date specified for award of the contract;

(2) Refer any offers received from an unapproved source to the head of the design control activity for approval.

The head of the design control activity will determine whether the offeror or its product meets or can meet the established qualification standards before the date specified for award of the contract; and

(3) Refer any requests for qualification to the design control activity.

(c) See 246.407(S-70) and 246.504 for quality assurance requirements.

PART 217—SPECIAL CONTRACTING METHODS

3. Section 217.7501 is amended in paragraph (b)(2) by adding a third sentence to read as follows:

217.7501 General.

* * * * *

(b) * * *

(2) * * * See 209.270 for requirements applicable to replenishment parts for aviation critical safety items.

* * * * *

PART 246—QUALITY ASSURANCE

4. Section 246.407 is amended by adding, after paragraph (f)(iii), a new paragraph (S-70) to read as follows:

246.407 Nonconforming supplies or services.

* * * * *

(S-70) The head of the design control activity is the approval authority for acceptance of any nonconforming aviation critical safety items or nonconforming modification, repair, or

overhaul of such items (see 209.270).

5. Subpart 246.5 is added to read as follows:

SUBPART 246.5--ACCEPTANCE

Sec.

246.504 Certificate of conformance.

246.504 Certificate of conformance.

Before authorizing a certificate of conformance for aviation critical safety items, obtain the concurrence of the head of the design control activity (see 209.270).