

(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).

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#### DEPARTMENT OF DEFENSE

##### 48 CFR Parts 225 and 252

[DFARS Case 2003-D099]

##### Defense Federal Acquisition Regulation Supplement; Berry Amendment Changes

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004. Sections 826 and 827 provide exceptions to the domestic source requirements of the Berry Amendment. Section 826 applies to the acquisition of food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements. Section 827 applies to the acquisition of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

**EFFECTIVE DATE:** September 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D099.

##### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 69 FR 26508 on May 13, 2004, to implement Sections 826 and 827 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). The rule amended DFARS 225.7002-2

and 252.225-7012 to provide new exceptions to the domestic source requirements of the Berry Amendment (10 U.S.C. 2533a), as authorized by Sections 826 and 827 of Public Law 108-136. DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

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 certifies that this final rule will not 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 exceptions to domestic source requirements authorized by the rule are limited to acquisitions of (1) Food, specialty metals, and hand or measuring tools needed to support contingency operations or to fulfill other urgent requirements; and (2) waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

##### 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.*

##### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

##### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 69 FR 26508 on May 13, 2004, is adopted as a final rule without change.

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

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#### DEPARTMENT OF DEFENSE

##### 48 CFR Parts 226 and 252

[DFARS Case 2002-D033]

##### Defense Federal Acquisition Regulation Supplement; Indian Incentive Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.