

**DEPARTMENT OF DEFENSE****48 CFR Parts 246 and 252****[DFARS Case 2004–D008]****Defense Federal Acquisition Regulation Supplement; Notification Requirements for Critical Safety Items****AGENCY:** Department of Defense (DoD).**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding notification of potential safety issues under DoD contracts. The proposed rule contains a contract clause requiring contractors to promptly notify the Government of any nonconformance or deficiency that could impact item safety.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before September 30, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D008, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004–D008 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- 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. Michele Peterson, (703) 602–0311.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed DFARS rule contains a new clause for use in contracts for (1) replenishment parts identified as critical safety items; (2) systems and subsystems, assemblies, and subassemblies integral to a system; and (3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies,

and subassemblies integral to a system. The clause requires the contractor to notify the administrative contracting officer and the procuring contracting officer within 72 hours after discovering or acquiring credible information concerning an item nonconformance or deficiency that may have a safety impact. This proposed rule is a result of Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Pub. L. 108–87), which required examination of appropriate standards and procedures to ensure timely notification to the Government and contractors regarding safety issues, including defective parts.

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 applies only in situations where nonconformances or deficiencies could impact item safety. The occurrence of such situations is expected to be limited. 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 2004–D008.

**C. Paperwork Reduction Act**

This proposed rule contains a new information collection requirement. DoD has submitted the following proposal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Defense Federal Acquisition Regulation Supplement (DFARS);

Notification Requirements for Critical Safety Items.

*Type of Request:* New requirement.

*Number of Respondents:* 100.

*Responses Per Respondent:* 1.

*Annual Responses:* 100.

*Average Burden Per Response:* 1 hour.

*Annual Burden Hours:* 100.

*Needs and Uses:* DoD needs this information to ensure that the Government receives timely notification of item nonconformances or deficiencies that could have a safety impact. DoD contracting and requirements personnel will use this information to notify the appropriate parties of the potential safety issue, assess the impact, mitigate the risk, and take corrective action.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

**List of Subjects in 48 CFR Parts 246 and 252**

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR parts 246 and 252 as follows:

1. The authority citation for 48 CFR parts 246 and 252 continues to read as follows:

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

**PART 246—QUALITY ASSURANCE**

2. Section 246.101 is amended by adding a definition of “Replenishment part” to read as follows:

**246.101 Definitions.**

\* \* \* \* \*

*Replenishment part*, as used in this subpart, means a repairable or consumable part, purchased after provisioning of that part, for—

- (1) Replacement;
- (2) Replenishment of stock; or
- (3) Use in the maintenance, overhaul, or repair of equipment.

3. Section 246.371 is added to read as follows:

**246.371 Notification of potential safety issues.**

(a) Use the clause at 252.246–7XXX, Notification of Potential Safety Issues, in solicitations and contracts for the acquisition of—

- (1) Replenishment parts identified as critical safety items;
- (2) Systems and subsystems, assemblies, and subassemblies integral to a system; or
- (3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and subassemblies integral to a system.

(b) Follow the procedures at PGI 246.371 for the handling of notifications received under the clause at 252.246–7XXX.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 252.246–7XXX is added to read as follows:

**252.246–7XXX Notification of Potential Safety Issues.**

As prescribed in 246.371(a), use the following clause:

Notification of Potential Safety Issues (XXX 2005)

(a) *Definitions.* As used in this clause—

*Critical safety item* means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the system or an unacceptable risk of personal injury or loss of life.

*Safety impact* means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$200,000.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All technical nonconformances for replenishment parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) within 72 hours after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause.

(1) The notification shall include—

- (i) A summary of the defect or nonconformance;
- (ii) A chronology of pertinent events;
- (iii) The identification of potentially affected items to the extent known at the time of notification;
- (iv) A point of contact to coordinate problem analysis and resolution; and
- (v) Any other relevant information.

(2) The Contractor may provide the notification in writing or telephonically. However, the Contractor shall provide a confirming written notification, that includes the information required by paragraph (c)(1) of this clause, to the ACO and the PCO within 72 hours after a telephonic notification. As further information becomes available, the Contractor shall also provide that information to the ACO and the PCO.

(d) The Contractor is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor. However—

(1) The subcontractor shall provide the notification required by paragraph (c) of this clause to—

- (i) The Contractor or the appropriate higher-tier subcontractor; and
- (ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract; and

(2) The Contractor shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts issued under this contract.

(End of clause)

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

**RIN 1018–AT84**

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of availability of draft economic analysis and draft environmental assessment, and notice of public hearings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*) under the Endangered Species Act of 1973 (Act), as amended. The draft economic analysis finds that, over the next 20 years, costs associated with Arkansas River shiner conservation activities are forecast to range from \$9 to \$11 million per year. In constant dollars, the draft economic analysis estimates there will be an economic impact of \$198 million over the next 20 years. The greatest economic impacts are expected to occur to concentrated animal feeding operations, oil and gas production, and water management activities, in that order. Comments previously submitted on the October 6, 2004, proposed rule (69 FR 59859) during both the initial and extended comment periods (April 28, 2005, 70 FR 21987), need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold three public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

**DATES:** Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before August 31, 2005 of this document, or at the public hearings.

We will hold public informational sessions from 4 p.m. to 5:15 p.m., followed by a public hearing from 7 p.m. to 9 p.m., on the following dates:

1. August 15, 2005: Oklahoma City, Oklahoma;
2. August 17, 2005: Amarillo, Texas;
3. August 18, 2005: Liberal, Kansas.

**ADDRESSES:** Meetings: The public informational sessions and hearings will be held at the following locations: