Subpart 225.70 - AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

Parent topic: Part 225 - FOREIGN ACQUISITION

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by DoD appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American statute or the Balance of Payments Program.

225.7001 Definitions.

As used in this subpart—

“Assembly” means an item forming a portion of a system or subsystem that—

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

“Bearing components” means the bearing element, retainer, inner race, or outer race.

“Component” means any item supplied to the Government as part of an end item or of another component, except that for use in 225.7004-2(b)(6), the term means an article, material, or supply incorporated directly into an end product.

“Covered country” means—

(1) The Democratic People’s Republic of North Korea;

(2) The People’s Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran (10 U.S.C. 4872 and 4875).

“End item,” as used in sections 225.7003 and 225.7018 , means the final production product when assembled or completed and ready for delivery under a line item of the contract (10 U.S.C. 2533b(m)).

“End product” means supplies delivered under a line item of the contract.

“Hand or measuring tools” means those tools listed in Federal supply classifications 51 and 52, respectively.

“Large medium-speed diesel engines”means diesel engines whose revolutions per minute (RPM) fall between 300 and 1500 RPM with a displacement greater than 1500 cubic inches per cylinder.

“Structural component of a tent”—

(1) Means a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

“Subsystem” means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, altitude control, and propulsion.

225.7002 Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.

225.7002-1 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4862 (the “Berry Amendment”). Except as provided in subsection 225.7002-2 , do not acquire—

(1) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:

(i) Food.

(ii) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof. Clothing includes items such as outerwear, headwear, underwear, nightwear, footwear, hosiery, handwear, belts, badges, and insignia. For additional guidance and examples, see PGI 225.7002-1 (a)(1)(ii).

(iii)(A) Tents and the structural components of tents;

(B) Tarpaulins; or

(C) Covers.

(iv) Cotton and other natural fiber products.

(v) Woven silk or woven silk blends.

(vi) Spun silk yarn for cartridge cloth.

(vii) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use

in such fabrics.

(viii) Canvas products.

(ix) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(x) Any item of individual equipment (Product or Service Code (PSC) 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a)(1).

(2) Hand or measuring tools, unless the tools were produced in the United States. For additional guidance, see PGI 225.7002-1 (a)(2).

(b) In accordance with section 8123 of the Department of Defense Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent Defense appropriations acts, except as provided in 225.7002-2 , do not acquire a flag of the United States (PSC 8345), unless such flag, including the materials and components thereof, is manufactured in the United States, consistent with the requirements at10 U.S.C. 4862. This restriction does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flag poles and accessories).

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1:

(a) Acquisitions not exceeding $200,000, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (37 U.S.C. 418(b)(4)).

(b) Acquisitions of any of the items in 225.7002-1, if the secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. (See the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(1) The following officials are authorized, without power of redelegation, to make such a domestic nonavailability determination:

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency shall follow the procedures at PGI

225.7002-2 (b)(3) when submitting a request for a domestic nonavailability determination.

(c) Acquisitions of items listed in FAR 25.104(a).

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by or for activities located outside the United States for personnel of those activities.

(f) Acquisitions of food or hand or measuring tools—

(1) In support of contingency operations; or

(2) For which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

(g) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(h) Acquisitions by vessels in foreign waters.

(i) Acquisitions of items specifically for commissary resale.

(j) Acquisitions of incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool—

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the threshold at 225.7002-2(a).

(k) Acquisitions of waste and byproducts of cotton or wool fiber for use in the production of propellants and explosives.

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with section 8118 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287), this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Product or Service Group (PSG) 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in PSG 83, Textile/leather/furs/apparel/findings/tents/flags, or PSG 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (PSG 1670); or

(2) The fibers and yarns are para-aramid fibers and continuous filament para-aramid yarns manufactured in a qualifying country.

(n) Acquisitions of chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country. (See 225.003 (10) and the requirement in 205.301 for synopsis within 7 days after contract award when using this exception.)

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts shall not be subject to requirements under subchapter II of chapter 385, United States Code (including 10 U.S.C. 4862), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

225.7002-3 Contract clauses.

Unless an exception at 225.7002-2 applies—

(a) Use the clause at 252.225-7012 , Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Use the clause at 252.225-7015 , Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the threshold at 225.7002-2(a) that require delivery of hand or measuring tools.

(c) Use the clause at 252.225-7006 , Acquisition of the American Flag, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of the American flag, with an estimated value that exceeds the threshold at 225.7002-2(a).

225.7003 Restrictions on acquisition of specialty metals.

225.7003-1 Definitions.

As used in this section—

“Alloy” means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(1) For alloys named by a single metallic element (e.g., titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(2) If two metals are specified in the name (e.g., nickel-iron alloy), those metals are the two

predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

“Automotive item”—

(1) Means a self-propelled military transport tactical vehicle, primarily intended for use by military personnel or for carrying cargo, such as—

(i) A high-mobility multipurpose wheeled vehicle;

(ii) An armored personnel carrier; or

(iii) A troop/cargo-carrying truckcar, truck, or van; and

(2) Does not include—

(i) A commercially available off-the-shelf vehicle; or

(ii) Construction equipment (such as bulldozers, excavators, lifts, or loaders) or other self-propelled equipment (such as cranes or aircraft ground support equipment).

“Commercial derivative military article” means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

“Electronic component” means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component and does not include any high performance magnets that may be used in the electronic component.

“High performance magnet” means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

“Produce” means—

(1) Atomization;

(2) Sputtering; or

(3) Final consolidation of non-melt derived metal powders.

“Specialty metal” means—

(1) Steel—

(i) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(ii) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(2) Metal alloys consisting of—

(i) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(ii) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium alloys.

“Steel” means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

225.7003-2 Restrictions.

(a) The following restrictions implement 10 U.S.C. 4863. Except as provided in 225.7003-3 —

(1) Do not acquire the following items, or any components of the following items, unless any specialty metals contained in the items or components are melted or produced in the United States (also see guidance at 225.7003-2 (a)):

(i) Aircraft.

(ii) Missile or space systems.

(iii) Ships.

(iv) Tank or automotive items.

(v) Weapon systems.

(vi) Ammunition.

(2) Do not acquire a specialty metal (e.g., raw stock, including bar, billet, slab, wire, plate, and sheet; castings; and forgings) as an end item, unless the specialty metal is melted or produced in the United States. This restriction applies to specialty metal acquired by a contractor for delivery to DoD as an end item, in addition to specialty metal acquired by DoD directly from the entity that melted or produced the specialty metal.

(b) For more information on specialty metals restrictions and reporting of noncompliances, see https://www.acq.osd.mil/asda/dpc/cp/ic/specialty-metals-restrictions.html .

225.7003-3 Exceptions.

(a) Acquisitions in the following categories are not subject to the restrictions in 225.7003-2 :

(1) Acquisitions at or below the simplified acquisition threshold.

(2) Acquisitions outside the United States in support of combat operations.

(3) Acquisitions in support of contingency operations.

(4) Acquisitions for which the use of other than competitive procedures has been approved on the basis of unusual and compelling urgency in accordance with FAR 6.302-2.

(5) Acquisitions of items specifically for commissary resale.

(6) Acquisitions of items for test and evaluation under the foreign comparative testing program (10 U.S.C. 2350a(g)). However, this exception does not apply to any acquisitions under follow-on production contracts.

(b) One or more of the following exceptions may apply to an end item or component that includes any of the following, under a prime contract or subcontract at any tier. The restrictions in 225.7003-2 do not apply to the following:

(1) Electronic components, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h-1 , determines that the domestic availability of a particular electronic component is critical to national security.

(2)(i) Commercially available off-the-shelf (COTS) items containing specialty metals, except the restrictions do apply to contracts or subcontracts for the acquisition of—

(A) Specialty metal mill products, such as bar, billet, slab, wire, plate, and sheet, that have not been incorporated into end items, subsystems, assemblies, or components. Specialty metal supply contracts issued by COTS producers are not subcontracts for the purposes of this exception;

(B) Forgings or castings of specialty metals, unless the forgings or castings are incorporated into COTS end items, subsystems, or assemblies;

(C) Commercially available high performance magnets that contain specialty metal, unless such high performance magnets are incorporated into COTS end items or subsystems (see PGI 225.7003-3 (b)(6) for a table of applicability of specialty metals restrictions to magnets); and

(D) COTS fasteners, unless—

(*1*) The fasteners are incorporated into COTS end items, subsystems, or assemblies; or

(*2*) The fasteners qualify for the commercial product exception in paragraph (b)(3) of this subsection.

(ii) If this exception is used for an acquisition of COTS end items valued at $5 million or more per item, the acquiring department or agency shall submit an annual report to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, in accordance with the procedures at PGI 225.7003-3 (b)(2).

(3) Fasteners that are commercial products and are acquired under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted or produced specialty metal, in the required form, for use in the production of fasteners for sale to DoD and other customers, that is not less than 50 percent of the total amount of the specialty metal that the manufacturer will purchase to carry out the production of such fasteners for all customers.

(4) Items listed in 225.7003-2 (a), manufactured in a qualifying country or containing specialty metals melted or produced in a qualifying country.

(5) Specialty metal in any of the items listed in 225.7003-2 if the USD(A&S), or an official authorized

in accordance with paragraph (b)(5)(i) of this subsection, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination). In accordance with 10 U.S.C. 4863(m)(4), the term “required form” in this section refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract. See guidance in PGI 225.7003-3 (b)(5).

(i) The secretary of the military department concerned is authorized, without power of redelegation, to make a domestic nonavailability determination that applies to only one contract. The supporting documentation for the determination shall include an analysis and written documentation by the requiring activity, with specificity, why alternatives that would not require a domestic nonavailability determination are unacceptable.

(ii) A domestic nonavailability determination that applies to more than one contract (i.e., a class domestic nonavailability determination), requires the approval of the USD(A&S).

(A) At least 30 days before making a domestic nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(*1*) Publish a notice on the in the Governmentwide point of entry (GPE) (https://www.sam.gov) of the intent to make the domestic nonavailability determination; and

(*2*) Solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

(B) The USD(A&S)—

(*1*) Will take into consideration all information submitted in response to the notice in making a class domestic nonavailability determination;

(*2*) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(*3*) Will ensure that any such domestic nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

(6) End items containing a minimal amount of otherwise noncompliant specialty metals (i.e., specialty metals not melted or produced in the United States that are not covered by another exception listed in this paragraph (b)), if the total weight of noncompliant specialty metal does not exceed 2 percent of the total weight of all specialty metal in the end item. This exception does not apply to high performance magnets containing specialty metals. See PGI 225.7003-3 (b)(6) for a table of applicability of specialty metals restrictions to magnets.

(c) *Compliance for commercial derivative military articles.* The restrictions at 225.7003-2 (a) do not apply to an item acquired under a prime contract if—

(1) The offeror has certified, and subsequently demonstrates, that the offeror and its subcontractor(s) will individually or collectively enter into a contractual agreement or agreements to purchase a sufficient quantity of domestically melted or produced specialty metal in accordance with

the provision at 252.225-7010 ; and

(2) The USD(A&S), or the secretary of the military department concerned, determines that the item is a commercial derivative military article (defense agencies see procedures at PGI 225.7003-3(c)). The contracting officer shall submit the offeror's certification and a request for a determination to the appropriate official, through agency channels, and shall notify the offeror when a decision has been made.

(d) National security waiver. The USD(A&S) may waive the restrictions at 225.7003-2 if the USD(A&S) determines in writing that acceptance of the item is necessary to the national security interests of the United States (see procedures at PGI 225.7003-3 (d)). This authority may not be delegated.

(1) The written determination of the USD(A&S)—

(i) Shall specify the quantity of end items to which the national security waiver applies;

(ii) Shall specify the time period over which the national security waiver applies; and

(iii) Shall be provided to the congressional defense committees before the determination is executed, except that in the case of an urgent national security requirement, the determination may be provided to the congressional defense committees up to 7 days after it is executed.

(2) After making such a determination, the USD(A&S) will—

(i) Ensure that the contractor or subcontractor responsible for the noncompliant specialty metal develops and implements an effective plan to ensure future compliance; and

(ii) Determine whether or not the noncompliance was knowing and willful. If the USD(A&S) determines that the noncompliance was knowing and willful, the appropriate debarring and suspending official shall consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that led to the noncompliance.

(3) Because national security waivers will only be granted when the acquisition in question is necessary to the national security interests of the United States, the requirement for a plan will be applied as a condition subsequent, and not a condition precedent, to the granting of a waiver.

225.7003-4 Reserved.

225.7003-5 Solicitation provision and contract clauses.

(a) Unless the acquisition is wholly exempt from the specialty metals restrictions at 225.7003-2 because the acquisition is covered by an exception in 225.7003-3 (a) or (d) (but see paragraph (d) of this section)—

(1) Use the clause at 252.225-7008 , Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial product, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require the delivery of specialty metals as end items.

(2) Use the clause at 252.225-7009 , Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that—

(i) Exceed the simplified acquisition threshold; and

(ii) Require delivery of any of the following items, or components of the following items, if such items or components contain specialty metal:

(A) Aircraft.

(B) Missile or space systems.

(C) Ships.

(D) Tank or automotive items.

(E) Weapon systems.

(F) Ammunition.

(b) Use the provision at 252.225-7010 , Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items,—

(1) That contain the clause at 252.225-7009 ; and

(2) For which the contracting officer anticipates that one or more offers of commercial derivative military articles may be received.

(c) If an agency cannot reasonably determine at time of acquisition whether some or all of the items will be used in support of combat operations or in support of contingency operations, the contracting officer should not rely on the exception at 225.7003-3 (a)(2) or (3), but should include the appropriate specialty metals clause or provision in the solicitation and contract.

(d) If the solicitation and contract require delivery of a variety of contract line items containing specialty metals, but only some of the items are subject to domestic specialty metals restrictions, identify in the Schedule those items that are subject to the restrictions.

225.7004 Restrictions on the procurement of goods other than U.S. goods.

225.7004-0 Scope.

This section implements 10 U.S.C. 4864.

225.7004-1 Definitions.

As used in this section—

“National technology and industrial base” means the persons and organizations that are engaged in production activities conducted within the United States, Australia, Canada, New Zealand, and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). (10 U.S.C. 4801)

“Star tracker” means a navigational tool used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the U.S. Government.

225.7004-2 Restrictions.

Except as provided in 225.7004-3, do not acquire any of the following items, either as end products or components, unless the manufacturer of the items is part of the national technology and industrial base:

(a) Buses, if multipassenger motor vehicles are purchased, leased, rented, or made available under contracts for transportation services.

(b) Components for naval vessels, to the extent they are unique to marine applications (see also 225.7004-4 for implementation of the restriction for naval vessels):

(1) Gyrocompasses.

(2) Electronic navigation chart systems.

(3) Steering controls.

(4) Propulsion and machinery control systems.

(5) Totally enclosed lifeboats.

(6) Welded shipboard anchor and mooring chain. See also 225.7004-5.

(c) Large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy.

(d) For T-AO 205 and T-ARC class vessels:

(1) Auxiliary equipment, including pumps, for all shipboard services.

(2) Propulsion system components, including engines, reduction gears, and propellers.

(3) Shipboard cranes.

(4) Spreaders for shipboard cranes.

(e) Star trackers.

225.7004-3 Exceptions.

(a) Contracts under the simplified acquisition threshold. The restrictions at 225.7004-2 do not apply to a contract or subcontract that does not exceed the simplified acquisition threshold.

(b) Buses. The restriction at 225.7004-2(a) does not apply in the following circumstances:

(1) Buses manufactured outside the national technology and industrial base are needed for temporary use because buses manufactured in the national technology and industrial base are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the national technology and industrial base.

(2) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the national technology and industrial base may be used for temporary periods of time. Such use may not however, exceed the period of time needed to meet the special requirement.

(3) Buses manufactured outside the national technology and industrial base are available at no cost to the U.S. Government.

(c) Components for naval vessels. The restriction at 225.7004-2(b) does not apply to acquisition of spare or repair parts needed to support components for naval vessels manufactured outside the United States. Support includes the purchase of spare gyrocompasses, electronic navigation chart systems, steering controls, propulsion and machinery control systems, totally enclosed lifeboats, and welded shipboard anchor and mooring chain.

(d) Components for auxiliary ships. The restriction at 225.7004-2(c) does not apply to large medium-speed engines for icebreakers or special mission ships.

(e) Star trackers. The restriction at 225.7004-2(e) does not apply to acquisition programs that have received Milestone A approval as defined in 10 U.S.C. 4211 before October 1, 2021, as documented by the requiring activity official performing program management responsibilities. The contracting officer shall include the Milestone A approval documentation in the contract file.

225.7004-4 Implementation of restriction on certain naval vessel components.

(a) The statute at 10 U.S.C. 4864(h) prohibits the use of contract clauses or certifications to implement the restriction at 225.7004-2(b) for naval vessel components.

(b) Agencies shall accomplish implementation of the restriction at 225.7004-2(b) through use of management and oversight techniques that achieve the objectives of this section without imposing a significant management burden on the Government or the contractor involved.

225.7004-5 Additional restrictions on anchor and mooring chain.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Pub. L. 101-511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) The statute at 10 U.S.C. 4864 also restricts acquisition of welded shipboard anchor and mooring chain, when used as a component of a naval vessel; however, the Appropriations Act restriction described in paragraph (a) of this section takes precedence over the restriction of 10 U.S.C. 4864 cited in 225.7004-2(b)(6).

225.7004-6 Waiver of restrictions.

(a) Welded shipboard anchor and mooring chain.

(1) In accordance with section 8016 of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the secretary of the department responsible for acquisition may waive the restrictions in 225.7004-2(b)(6) and 225.7004-5, on a case-by-case basis, if—

(i) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(ii) The acquisition is necessary to acquire capability for national security purposes.

(2) Document the waiver in a written determination and findings containing—

(i) The factors supporting the waiver; and

(ii) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(3) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

(b) Star trackers. The waiver criteria at paragraph (c) of this section apply, except that the USD(A&S) may delegate the authority to waive a restriction for a star tracker for a particular foreign country to the service acquisition executive, without power of redelegation (section 1603, National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283)).

(c) Waiver of restrictions of 10 U.S.C. 4864(a). The restrictions on certain foreign purchases at 225.7004-2 may be waived, except as provided in paragraphs (a) and (b) of this section, as follows:

(1)(i) USD(A&S), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) U.S. producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States

to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the Federal Register and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver shall be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the national technology and industrial base are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the national technology and industrial base.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of national technology and industrial base origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of national technology and industrial base origin.

225.7004-7 Contract clauses.

(a) Unless a waiver has been granted, use the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require welded shipboard anchor or mooring chain.

(b) Use the clause at 252.225-7062, Restriction on Acquisition of Large Medium-Speed Diesel Engines, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require large medium-speed diesel engines for new construction of auxiliary ships using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy unless—

(1) An exception at 225.7004-3(d) applies; or

(2) A waiver has been granted.

(c) Unless a waiver has been granted, use the clause at 252.225-7063, Restriction on Acquisition of Components of T–AO 205 and T-ARC Class Vessels, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that require components of T-AO 205 and T-ARC class vessels.

(d) Use the clause at 252.225-7064, Restriction on Acquisition of Certain Satellite Components, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold and that include the acquisition of star trackers unless—

(1) An exception at 225.7004-3(e) applies; or

(2) A waiver has been granted.

225.7005 Reserved.

225.7006 Reserved.

225.7007 Reserved.

225.7008 Reserved.

225.7009 Restriction on ball and roller bearings.

225.7009-1 Scope.

This section implements section 8065 of the Fiscal Year 2002 DoD Appropriations Act (Pub. L. 107-117) and the same restriction in subsequent DoD appropriations acts.

225.7009-2 Restriction.

(a) Do not acquire ball and roller bearings unless—

(1) The bearings are manufactured in the United States or Canada; and

(2) For each ball or roller bearing, the cost of the bearing components manufactured in the United States or Canada exceeds 50 percent of the total cost of the bearing components of that ball or roller bearing.

(b) The restriction at 225.7003-2 may also apply to bearings that are made from specialty metals, such as high carbon chrome steel (bearing steel).

225.7009-3 Exception.

The restriction in 225.7009-2 does not apply to contracts or subcontracts for the acquisition of commercial products, except for commercial ball and roller bearings acquired as end items.

225.7009-4 Waiver.

The secretary of the department responsible for acquisition or, for the Defense Logistics Agency, the Component Acquisition Executive, may waive the restriction in 225.7009-2, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7009-5 Contract clause.

Use the clause at 252.225-7016 , Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, unless—

(a) The items being acquired are commercial products other than ball or roller bearings acquired as end items;

(b) The items being acquired do not contain ball and roller bearings; or

(c) A waiver has been granted in accordance with 225.7009-4 .

225.7010 Reserved.

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011-1 Restriction.

(a) In accordance with Section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Pub. L. 102-172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate for use in a Government-owned facility or a facility under the control of (e.g., leased by) DoD, unless it is melted and rolled in the United States or Canada:

(1) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(2) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

(b) This restriction—

(1) Applies to the acquisition of carbon, alloy, or armor steel plate as a finished steel mill product that may be used “as is” or may be used as an intermediate material for the fabrication of an end product; and

(2) Does not apply to the acquisition of an end product (e.g., a machine tool), to be used in the facility, that contains carbon, alloy, or armor steel plate as a component.

225.7011-2 Waiver.

The secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011-3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225-7030 , Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that—

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a Government-owned facility or a facility under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012-1 Restriction.

In accordance with Section 8112 of Pub. L. 100-202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012-2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012-3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225-7011 , Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

225.7013-0 Scope.

This section implements 10 U.S.C. 8679 and 10 U.S.C. 8680.

225.7013-1 Definitions.

As used in this section—

“Corrective and preventive maintenance or repair” means—

(1) Maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and

(2) Scheduled maintenance or repair actions to prevent or discover functional failures.

“Facilities maintenance” means the effort required to—

(1) Provide housekeeping services throughout the ship;

(2) Perform coating maintenance and repair to exterior and interior surfaces due to normal environmental conditions; and

(3) Clean mechanical spaces, mission zones, and topside spaces.

225.7013-2 Restrictions.

(a) *Contract award (10 U.S.C. 8679).* Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces.

(b) *Overhaul, repair, or maintenance (10 U.S.C. 8680).*

(1) Do not overhaul, repair, or maintain, in a shipyard,outside the United States or Guam, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States or Guam.

(2) This restriction on overhaul, repair, or maintenance does not apply to—

(i) Voyage repairs; or

(ii) Repairs necessary to correct damage sustained due to hostile actions or interventions.

(3) For a naval vessel classified as a littoral combat ship and operating on deployment—

(i) Corrective and preventive maintenance or repair, whether intermediate or depot level, and facilities maintenance may be performed if the work is performed by U.S. Government personnel or U.S. contractor personnel—

(A) In a foreign shipyard;

(B) At a facility outside of a foreign shipyard; or

(C) At any other facility convenient to the vessel;

(ii) Foreign workers may be used to perform corrective and preventive maintenance or repair, only if the Secretary of the Navy, without power of delegation, determines that travel by U.S. Government or contractor personnel to perform the maintenance or repair is not advisable for health or safety reasons; and

(iii) Foreign contractors may perform facilities maintenance only as approved by the Secretary of the Navy.

225.7014 Restrictions on military construction.

(a) For restriction on award of military construction contracts to be performed in the United States outlying areas in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.273 (a).

(b) For restriction on acquisition of steel for use in military construction projects, see 236.274 .

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602-70 .

225.7017 Utilization of domestic photovoltaic devices.

225.7017-1 Definitions As used in this section—

“Caribbean Basin country photovoltaic device” means a photovoltaic device that—

(1) Is wholly manufactured in a Caribbean Basin country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Caribbean Basin country.

“Covered contract” means an energy savings performance contract, a utility services contract, or a private housing contract awarded by DoD, to be performed in the United States, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed in the United States on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD in the United States for the full economic life of the device.

“Designated country photovoltaic device” means a World Trade Organization Government Procurement Agreement (WTO GPA) country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

“Domestic photovoltaic device” means a photovoltaic device that is manufactured in the United States.

“Foreign photovoltaic device” means a photovoltaic device other than a domestic photovoltaic device.

“Free Trade Agreement country photovoltaic device” means a photovoltaic device that—

(1) Is wholly manufactured in a Free Trade Agreement country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a Free Trade Agreement country.

“Least developed country photovoltaic device” means a photovoltaic device that—

(1) Is wholly manufactured in a least developed country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from

which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a least developed country.

"Photovoltaic device" means a device that converts light directly into electricity through a solid-state, semiconductor process.

“Qualifying country photovoltaic device” means a photovoltaic device manufactured in a qualifying country.

“U.S.-made photovoltaic device” means a photovoltaic device that—

(1) Is manufactured in the United States; or

(2) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of the United States.

“WTO GPA country photovoltaic device” means a photovoltaic device that—

(1) Is wholly manufactured in a WTO GPA country; or

(2) In the case of a photovoltaic device that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed, provided that the photovoltaic device is not subsequently substantially transformed outside of a WTO GPA country.

225.7017-2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.).

225.7017-3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts that exceed the simplified acquisition threshold, with the following exceptions:

(a) *Qualifying country.*Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103 (a)(i)(A) provides an exception to the Buy American statute for products of qualifying countries, as defined in 225.003 .

(b) *Buy American—unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than $174,000, the exception for unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements.*

(1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices , photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR subpart 25.4).

(2) *World Trade Organization—Government Procurement Agreement*. For covered contracts that utilize photovoltaic devices that are valued at $174,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

225.7017-4 Solicitation provision and contract clause.

(a)(1) Use the clause at 252.225-7017 , Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a contract expected to exceed the simplified acquisition threshold that may be a covered contract, i.e., an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, if it is a covered contract.

(b) Use the provision at 252.225-7018 , Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at 252.225-7017 .

225.7018 Restriction on acquisition of certain magnets, tantalum, and tungsten.

225.7018-0 Scope.

This section implements 10 U.S.C. 4872.

225.7018-1 Definitions.

As used in this section—

“Covered material” means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tantalum metals and alloys;

(4) Tungsten metal powder; and

(5) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy

alloy.

“Electronic device” means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

“Tungsten heavy alloy” means a tungsten base pseudo alloy that—

(1) Meets the specifications of ASTM B777 or SAE-AMS-T-21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

225.7018-2 Restriction.

(a) General. Except as provided in 225.7018-3 and 225.7018-4 —

(1) Effective through December 31, 2026, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(2) Effective January 1, 2027, do not acquire any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material. (Section 854, Pub. L. 118-31; 10 U.S.C. 4872.)

(b) *Samarium-cobalt magnets and neodymium-iron-boron magnets.*

(1) Effective through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes -

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(2) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets, except as provided at 225.7018-3.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(4) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets, except as provided at 225.7018-3.

(c) *Tantalum metals and alloys.*

(1) Effective through December 31, 2026, for production of tantalum metals of any kind and alloys, this restriction includes the reduction or melting of any form of tantalum to create tantalum metal including unwrought, powder, mill products, and alloys. The restriction also covers all subsequent phases of production of tantalum metals and alloys.

(2) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys, except as provided at 225.7018-3.

(d) *Tungsten metal powder and tungsten heavy alloy.*

(1) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes–

(i) Atomization;

(ii) Calcination and reduction into powder;

(iii) Final consolidation of non-melt derived metal powders; and

(iv) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(2) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, except as provided at 225.7018-3.

225.7018-3 Exceptions.

The restriction in section 225.7018-2 does not apply to an acquisition—

(a) At or below the simplified acquisition threshold;

(b) Outside the United States of an item for use outside the United States; or

(c) Of an end item containing a covered material that is—

(1) A commercially available off-the-shelf item (but see PGI 225.7018-3 (c)(1) with regard to commercially available samarium-cobalt magnets), other than—

(i) A commercially available off-the-shelf item that is—

(A) 50 percent or more tungsten by weight; or

(B) 50 percent or more covered material by weight effective January 1, 2027;

(ii) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component; or

(iii) Effective January 1, 2027, a covered material that is a mill product, such as bar, billet, slab,

wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic and Critical Materials Board of Directors pursuant to 50 U.S.C. 98h-1 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018-3 (c)(2) with regard to samarium-cobalt magnets used in electronic components); or

(3) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) If the authorized agency official concerned, as specified in 225.7018-4, determines that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(1) For tantalum metal, tantalum alloy, or tungsten heavy alloy, the term “required form” refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under the contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(2) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term “required form” refers to the form and properties of the magnets.

225.7018-4 Nonavailability determination.

(a) *Individual nonavailability determinations*.

(1) The head of the contracting activity is authorized to make a nonavailability determination described in 225.7018-3 (d) on an individual basis (i.e., applies to only one contract).

(2) The supporting documentation for the determination shall include an analysis and written certification by the requiring activity that describes, with specificity, why alternatives that would not require a nonavailability determination are unacceptable. The template for an individual nonavailability determination is available at PGI 225.7018-4(a)(2).

(3) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018-4 (a)(4)—

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual nonavailability determinations are requested, but denied.

(b) *Class nonavailability determinations*. A class nonavailability determination (i.e., a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018-4 (b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice in the GPE (https://www.sam.gov) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

225.7018-5 Contract clause.

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018-4 , use the clause at 252.225-7052 , Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that exceed the simplified acquisition threshold.

225.7019 Prohibition on use of certain energy sourced from inside the Russian Federation.

225.7019-1 Definitions.

As used in this section—

Covered military installation means a military installation in Europe identified by DoD as a main operating base.

Furnished energy means energy furnished to a covered military installation in any form and for any purpose, including heating, cooling, and electricity.

Main operating base means a facility outside the United States and its territories with permanently stationed operating forces and robust infrastructure.

225.7019-2 Prohibition.

In accordance with section 2821 of the National Defense Authorization Act for Fiscal Year 2020

(Pub. L. 116-92), contracts for the acquisition of furnished energy for a covered military installation shall not use any energy sourced from inside the Russian Federation as a means of generating the furnished energy for the covered military installation. The prohibition—

(a) Applies to all forms of energy that are furnished to a covered military installation; and

(b) Does not apply to energy converted by a third party into another form of energy and not directly delivered to a covered military installation.

225.7019-3 Waiver.

(a) *Request and approval of waiver*. The requiring activity may submit to the contracting activity a request for waiver of the prohibition in 225.7019-2 Prohibition. for a specific contract for the acquisition of furnished energy for a covered military installation. The head of the contracting activity, without power of redelegation, may approve the waiver, upon certification to the congressional defense committees that—

(1) The waiver of section 2821 is necessary to ensure an adequate supply of furnished energy for the covered military installation; and

(2) National security requirements have been balanced against the potential risk associated with reliance upon the Russian Federation for furnished energy.

(b)*Submission of waiver notice*. (1) Not later than 14 days before the execution of any energy contract for which a waiver is granted under paragraph (a) of this section, the head of the contracting activity shall submit to the congressional defense committees a notice of the waiver. See PGI 225.7019-3 for waiver procedures.

(2) The waiver notice shall include the following:

(i) The rationale for the waiver, including the basis for the certifications required by paragraph (a) of this section.

(ii) An assessment of how the waiver may impact DoD's European energy resilience strategy.

(iii) An explanation of the measures DoD is taking to mitigate the risk of using Russian Federation furnished energy.

225.7019-4 Solicitation provision and contract clause.

Unless a waiver has been granted in accordance with 225.7019-3 Waiver.—

(a) Use the provision at 252.225-7053 Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation., Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation; and

(b) Use the clause at 252.225-7054 Prohibition on Use of Certain Energy Sourced from Inside the

Russian Federation., Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services and solicitations and contracts at or below the simplified acquisition threshold, that are for the acquisition of furnished energy for a covered military installation.

225.7020 Prohibition on contracting with the Maduro regime.

225.7020-1 Definitions.

As used in this section—

Agency or instrumentality of the government of Venezuela means an agency or instrumentality of a foreign state as defined in 28 U.S.C. 1603(b), with each reference in section 1603(b) to a foreign state deemed to be a reference to Venezuela.

Business operations means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Government of Venezuela means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

Person means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2) of this definition.

225.7020-2 Prohibition.

In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), DoD is prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the U.S. Government, except as provided in 225.7020-3 or 225.7020-4.

225.7020-3 Exceptions.

The prohibition in 225.7020-2 does not apply if—

(a) The person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury; or

(b) The acquisition is related to the operation and maintenance of the U.S. Government's consular office and diplomatic posts in Venezuela.

225.7020-4 Joint determination.

(a) The prohibition in section 225.7020-2 does not apply to an acquisition jointly determined by the Secretary of Defense and Secretary of State, without power of redelegation, to be—

(1) Necessary for purposes of—

(i) Providing humanitarian assistance to the people of Venezuela;

(ii) Disaster relief and other urgent lifesaving measures; or

(iii) Carrying out noncombatant evacuations; or

(2) Vital to the national security interests of the United States.

(b) Follow the procedures at 225.7020-4(b) when entering into a contract on the basis of a joint determination.

225.7020-5 Solicitation provision and contract clause.

(a) Use the provision at 252.225-7055, Representation Regarding Business Operations with the Maduro Regime, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime.

(b) Unless the exception at 225.7020-3(b) applies or a joint determination has been made in accordance with 225.7020-4, use the clause at 252.225-7056, Prohibition Regarding Business Operations with the Maduro Regime, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

225.7021 Disclosure requirements for employment transparency regarding individuals who perform work in the People's Republic of China.

See PGI 225.7021 for additional procedures regarding disclosures.

225.7021-1 Definitions.

As used in this section—

"Covered contract" means any DoD contract or subcontract with a value in excess of $5 million, not including contracts for commercial products and commercial services.

"Covered entity" means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a covered contract in the People's Republic of China, including by leasing or owning real property used in the performance of the covered contract in the People's Republic of China.

225.7021-2 Restrictions.

In accordance with section 855 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), do not award, extend, or exercise an option on a covered contract unless a covered entity has submitted each required disclosure.

225.7021-3 National security waiver of disclosure.

The senior procurement executive (SPE) may waive the disclosure requirements at 225.7021-2 if the SPE determines in writing that such disclosure would not be in the national security interests of the United States. This authority may not be delegated. See PGI 225.7021-3 for procedures and content requirements regarding the SPE's written determination.

225.7021-4 Solicitation provision and contract clause.

(a) Use the provision at 252.225-7057, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations that include the clause at 252.225-7058.

(b) Unless a waiver has been granted, use the clause at 252.225-7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, in solicitations and contracts with an estimated value in excess of $5 million.

225.7022 Prohibition on certain procurements from the Xinjiang Uyghur Autonomous Region.

225.7022-1 Scope.

This section implements section 855 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) and 10 U.S.C. 4661.

225.7022-2 Definitions.

As used in this section—

“Forced labor” means any work or service that is exacted from any person under the menace of any penalty for nonperformance and that the worker does not offer to perform voluntarily (10 U.S.C. 2496).

“XUAR” means the Xinjiang Uyghur Autonomous Region of the People’s Republic of China (10 U.S.C. 2496).

225.7022-3 Prohibition.

Contracting officers shall not award a contract utilizing funds appropriated or otherwise made available for any fiscal year for any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, unless an exception applies.

225.7022-4 Exceptions.

The prohibition at 225.7022-3 does not apply to—

(a) Purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card; or

(b) Purchases using the SF 44 in accordance with 213.306.

225.7022-5 Solicitation provision and contract clause.

(a) Use the provision at 252.225-7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Representation, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items, that contain the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

(b) Use the clause at 252.225-7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, in solicitations, contracts, and orders for products utilizing funds appropriated or otherwise made available for any fiscal year, including solicitations, contracts, and orders using FAR part 12 procedures for the acquisition of commercial products, commercial services, and COTS items.

225.7023 Restriction on acquisition of personal protective equipment and certain other items from non-allied foreign

nations.

225.7023-1 Definitions.

As used in this section—

“Covered item” means an article or item of—

(1) Personal protective equipment for use in preventing spread of disease, such as by exposure to infected individuals or contamination or infection by infectious material, including—

(i) Nitrile and vinyl gloves;

(ii) Surgical masks;

(iii) Respirator masks and powered air purifying respirators and required filters;

(iv) Face shields and protective eyewear;

(v) Surgical and isolation gowns and head and foot coverings; or

(vi) Clothing; and

(vii) The materials and components thereof, other than sensors, electronics, or other items added to and not normally associated with such personal protective equipment or clothing; or

(2) Sanitizing and disinfecting wipes, testing swabs, gauze, and bandages.

225.7023-2 Restriction.

Except as provided in 225.7023-3, do not acquire a covered item from a covered country in accordance with (10 U.S.C. 4875).

225.7023-3 Exceptions.

The restriction in section 225.7023-2 does not apply to acquisitions—

(a) Of covered items for use outside of the United States;

(b) At or below $200,000; or

(c)(1) If the head of the contracting activity determines that a covered item of satisfactory quality and quantity, in the required form, cannot be procured as and when needed from nations other than a covered country to meet requirements at a reasonable price.

(2) The contracting officer shall include a copy of any such determination in the contract file.

225.7023-4 Contract clause.

Unless an exception applies, use the clause at 252.225-7061, Restriction on the Acquisition of Personal Protective Equipment and Certain Other Items from Non-Allied Foreign Nations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services, and that—

(a) Are for the acquisition of covered items;

(b) Are for use within the United States; and

(c) Have an estimated value greater than $200,000.

225.7024 Restriction on acquisition of fuel for overseas contingency operations.

225.7024-1 Scope.

This section implements section 843 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81), for the acquisition of fuel for overseas contingency operations.

225.7024-2 Prohibition.

Contracting officers shall not award, for an overseas contingency operation, a contract for fuel, in whole or in part, or derivatives of such fuel, that is sourced from nations or regions prohibited from selling petroleum to the United States. See FAR subpart 25.7 and the Office of Foreign Assets Control website at https://ofac.treasury.gov/sanctions-programs-and-country-information for prohibited sources.

225.7024-3 Procedures.

(a) For contracts for the acquisition of fuel for overseas contingency operations, including contracts using FAR part 12 procedures, expected to exceed the simplified acquisition threshold, the contracting officer—

(1) May request records from the prospective contractor to verify compliance with the following statutes and regulations only when the head of the contracting activity determines in writing that it is necessary:

(i) The Foreign Corrupt Practices Act (15 U.S.C. 78dd-1 *et seq.*).

(ii) International Traffic in Arms Regulations at 22 CFR parts 120 through 130 (see PGI 225.7901-2).

(iii) Export Administration Regulations at 15 CFR parts 730 through 774 (see PGI 225.7901-2).

(iv) Relevant regulations promulgated by the Office of Foreign Assets Control of the Department of the Treasury. Sanction information for specific countries and programs is available at https://ofac.treasury.gov/sanctions-programs-and-country-information.

(2) To the maximum extent practicable, shall not disqualify an otherwise responsible offeror on the basis of an unsupported denial of access to a facility or equipment by a host-nation government. The provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, requires offerors to report promptly to the contracting officer, prior to award, any instance of unsupported denial of access to a facility or equipment by a host-nation government that may prevent it from complying with the terms and conditions of the solicitation.

(b) See 215.101-71 for the requirement to consider using a tradeoff process.

225.7024-4 Solicitation provision.

Use the provision at 252.225-7065, Restriction on Acquisition of Fuel for Overseas Contingency Operations, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for the acquisition of fuel for overseas contingency operations and are expected to exceed the simplified acquisition threshold.