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

Parent topic: PGI Part 225 - INTERNATIONAL ACQUISITION

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

PGI 225.7002-1 Restrictions.

(a)(1)(ii)(*1*) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(*i*) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(*ii*) Footwear listed in PSC 8430 or 8435.

(*iii*) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(*iv*) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(*1*) of this section also contain items that are not clothing, such as—

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS 225.7002-1 to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated

synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS 225.7002-2(m).

Example: A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

(2) *Hand or measuring tools.*

(A) As applied to hand or measuring tools, "produced in the United States" means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see 225.7002-1 (a)(1)(ii)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR Subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

PGI 225.7002-2 Exceptions.

(b) *Domestic nonavailability determinations.*

(3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(B) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

PGI 225.7003 Restrictions on acquisition of specialty metals.

PGI 225.7003-2 Restrictions.

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 4862. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of "component" in the clause at DFARS 252.225-7009, a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS 225.7003-2(a) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items*.

If a department or agency uses the exception at DFARS 225.7003-3(b)(2) for an acquisition of COTS end items valued at $5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report "COTS Specialty Metal Exceptions Granted During Fiscal Year ____."

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

(1) Contract number and any applicable delivery order number;

(2) Dollar value; and

(3) Item description.

(C) Submit the report by October 31 of each year to:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(4) For samarium-cobalt magnets contained in an item listed in 225.7003-2(a) manufactured in a

qualifying country, see paragraph (b)(6)(C) of this section.

(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(*1*) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively "nonavailable." Where these "reasonableness" limits should be drawn is a case-by-case decision.

(*2*) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(B)(1) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(b)(5) shall submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(2) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), will forward the request to USD(A&S) as appropriate.

(C) For domestic nonavailability determinations with regard to samarium-cobalt high performance magnets, see paragraph (b)(6)(D) of this section.

(6) Application of specialty metals restrictions to magnets.

(A) The two most common types of high performance magnets are samarium-cobalt magnets and neodymium-iron-boron magnets. Only samarium-cobalt magnets contain specialty metals and are subject to the restrictions of 10 U.S.C. 4863 in this section, as well as the restrictions of 10 U.S.C. 4872 at 225.7018 . Neodymium-iron-boron magnets are only subject to the restrictions of 10 U.S.C. 4872 at 225.7018 , because they do not contain specialty metals. There are no other commonly used magnets that contain specialty metals.

(B) Table.

HPM = High performance magnet

COTS = Commercially available off-the-shelf

SmCo = Samarium Cobalt

Magnet made of specialty metal is:	Commercially available, SmCo HPM	NOT Commercially available, SmCo HPM
Incorporated into COTS subsystem or COTS end item	NOT restricted	*
NOT incorporated into COTS subsystem or COTS end item	Restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content

* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available.

(C) Samarium-cobalt magnets contained in an item manufactured in a qualifying country are still subject to the requirements of 10 U.S.C. 4872, because there is no exception in 10 U.S.C. 4872 for items manufactured in a qualifying country comparable to the exception at 225.7003-3 (b)(4) to the specialty metal restrictions of 10 U.S.C. 4863.

(D) Even if samarium-cobalt magnets are determined to be domestically nonavailable under this section, the restrictions of 10 U.S.C. 4872 still apply unless samarium-cobalt magnets melted or produced outside a covered country are also determined to be nonavailable in accordance with 225.7018-4 .

(c) *Compliance for commercial derivative military articles*.

(i) A department or agency requesting a determination or approval from USD(A&S) in accordance with DFARS 225.7003-3(c) shall submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to USD(A&S) as appropriate.

(d) *National security waiver*.

(i) A department or agency shall request a national security waiver of the restrictions of 10 U.S.C. 4863 from USD(A&S) in accordance with DFARS 225.7003-3(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at 225.7003-2 (a) and covered by 10 U.S.C. 4863. The department or agency shall submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060

(ii) The request shall include—

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered—

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

(H) A technical description of the affected parts, their role in the larger assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor’s efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(A&S) as appropriate.

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

PGI 225.7018-3 Exceptions.

(c)(1) Commercially available off-the-shelf samarium-cobalt magnets are still subject to the restrictions of 10 U.S.C. 4863 unless incorporated into commercially available off-the-shelf end items or subsystems (see (b)(2)(i)(C)).

(2) A samarium-cobalt magnet that is exempt from 10 U.S.C. 4872 because it is incorporated in an electronic device is still subject to the restrictions of 10 U.S.C. 4863, because the exemption under that statute applies to “electronic component,” which excludes any high performance magnet used in the electronic component (see definition of “electronic component” at 225.7003-1).

PGI 225.7018-4 Nonavailability determination.

(a) Individual nonavailability determinations.

(2) Contracting officers may use the following template for individual nonavailability determinations under this section:

SUBJECT: Individual Nonavailability Determination Exception under DFARS 225.7018-4

PROGRAM, ITEM, OR PART DESCRIPTION: _____

CONTRACT OR SOLICITATION NUMBER: _____

BACKGROUND: Per the requirements of 10 U.S.C. 4872, DFARS 252.225-7052 prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran. Per DFARS

225.7018-4, the Head of Contracting Activity (HCA) can authorize an exception to DFARS 252.225-7052 through an ‘Individual Nonavailability Determination’ if they determine that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country. ANALYSIS OF ALTERNATIVES:

See Attachment A for an analysis of why alternatives that would not require a nonavailability determination are unacceptable. CERTIFICATION: Based on the satisfactory quality, quantity, required form, timeliness, and/or reasonable price issues described in Attachment A, I hereby certify that the requirements for an individual nonavailability determination under DFARS 225.7018-4

have been met._____ Signature of Government Contracting Officer or Program Representative

_____ Date

Official Action on Request: __ Approved __ Disapproved [If disapproved, give reason.]

_____

_____ Signature of Head of Contracting Activity

_____ Date ATTACHMENT A: Analysis of Alternatives Required for an Individual Nonavailability Determination as per DFARS 225.7018-4

PART A: Data on Alternative Sources. [Can be completed either by Government or Contractor.]

1. Detailed information on current or proposed non-compliant DFARS 225.7018 source(s).

ITEM #	COMPONENT NAME	COVERED MATERIAL	CURRENT MANUFACTURER(S)	COUNTRY OF ORIGIN	MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY REQUIRED	PRICE PER UNIT	TOTAL PRICE
1									

2. Detailed market research conducted on alternative compliant DFARS 225.7018 source(s).

ITEM #	COVERED MATERIAL	POTENTIAL ALTERNATIVE MANUFACTURER(S)	COUNTRY OF ORIGIN	PROPOSED MATERIAL SPECIFICATION OR GRADE	DELIVERY DATE AND LEAD TIME	QUANTITY PROPOSED	PRICE PER UNIT	TOTAL PRICE	RE-DESIGN OR RE-QUALIFICATION COST	RE-DESIGN OR RE-QUALIFICATION COST TIMELINE
1										

3. Other pertinent information regarding the need for a nonavailability determination based on satisfactory quality, quantity, required form, timeliness, and/or reasonable price:

_____
_____
_____

_____ PART B: Analysis of Alternatives—Must be completed by a Government Representative

I have verified the information in Part A and a nonavailability determination is requested for the following reason(s):

ITEM #	COVERED MATERIAL	NON-SATISFACTORY QUALITY	INSUFFICENT AVAILABLE QUANTITY	DOES NOT MET REQUIRED FORM	DOES NOT MEET TIMELINESS REQUIREMENTS FOR PROGRAM/CUSTOMER	UNREASONABLE PRICE PER UNIT	UNREASONABLE PRICE FOR RE-DESIGN OR RE-QUALIFICATION
1							

_____ Signature of Government Contracting Officer or Program Representative

_____ Date

ATTACHMENT B: Definitions and Instructions

As used in this document—

“Number” means the National Stock Number (NSN) or other part number applicable to a given component name;

“Component name” includes a description of the part and the name of the end item incorporating that part (e.g., “Actuator – Joint Direct Attack Munition” or “Sphere - M1028 Canister CTG”);

“Covered material” means samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metal and alloys, tungsten metal powder, and tungsten heavy alloy or any finished / semi-finished component containing tungsten heavy alloy;

“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% tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has a density of at least 16.5 g/cm3

“Current manufacturer” means the entity that produces the covered material;

“Country of origin” means the location of the facility in which the current manufacturer produces the covered material;

Delivery date and lead time” includes (1) the date by which the covered material is required to produce the component name and (2) the administrative lead time and procurement lead time required by the manufacturer of the component name, to secure appropriate covered material; and

“Price per unit” means the unit price of the covered material;

For any determination under “Part B”, the Head of Contracting Activity is required to produce a separate report describing why a particular exception is applicable to a given action.

(3)

Provide a copy of signed individual nonavailability determination and supporting documentation or notification when an individual waiver is requested, but denied to:

OUSD(A&S)

DASD, Industrial Policy

U.S. Department of Defense

3330 Defense Pentagon, Room 3B854

Washington, DC 20301-3330

(b)(i) When requesting a class nonavailability determination, submit the request, including the proposed determination, to—

Principal Director, Defense Pricing, Contracting, and Acquisition Policy

ATTN: OUSD(A&S) DPCAP/CP

3060 Defense Pentagon

Washington, DC 20301-3060.

(ii) The Principal Director, DPCAP, will forward the request to the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) as appropriate.

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

PGI 225.7019-3 Waiver.

(a) The following are factors to take into consideration for granting a waiver:

(1) The energy supply system is physically incapable of segregating Russian Federation energy from non-Russian Federation energy.

(2) The installation can only obtain the necessary energy from its current supplier without the unaffordable expense of constructing new supply lines.

(3) The price of requiring the supplier to segregate the energy is unaffordable and would result in the installation being unable to perform its mission within its budget authority.

(4) Consideration, by the requiring activity, of installation energy and security resilience has been taken into account (e.g., on-site sources of energy and fuel resupply would allow the installation to continue to perform its mission even with disruption of Russian Federation-sourced energy, the installation has addressed energy resilience and security risks and vulnerabilities, etc.).

(b) The head of the contracting activity shall submit to the congressional defense committees a notice of the waiver with a copy to DPCAP, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, at least 14 days before the award of an energy contract on the basis of an approved waiver. The notification shall include a copy of the waiver. The contracting officer shall include a copy of the approved waiver in the contract file.

PGI 225.7020 Prohibition on contracting with the Maduro regime.

PGI 225.7020-4 Joint determination.

(b) Contracting officers shall—

(1) Notify Defense Pricing and Contracting, Contract Policy, via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil, upon entering into a contract on the basis of a joint determination made by the Secretary of Defense and the Secretary of State in accordance with agency procedures for the review and coordination, and include a copy of the joint determination in the notification; and

(2) Include a copy of the joint determination in the contract file.

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

Contracting officers shall provide disclosures received from a covered entity in response to the provision at DFARS 252.225-7057 and the clause at DFARS 252.225-7058 to Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

PGI 225.7021-3 National security waiver of disclosure.

(b) Determination. The national security waiver request to the senior procurement executive shall include—

(1) The disclosure requirements to which the national security waiver applies;

(2) The time period that the waiver will cover;

(3) A description of the contract requirement;

(4) Impacts if a national security waiver is not granted;

(5) Operational and national security implications;

(6) Other national security considerations, such as how the requested waiver will contribute to national security policy or operational security.

(c) Include a copy of the signed determination in the contract file.

(d) For a military department or defense agency provide a copy of the approved national security waiver to the Principal Deputy, Defense Pricing, Contracting, and Acquisition Policy, Contract Policy (DPCAP/CP) via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

(e) The following defense field activities shall submit requests for national security waivers to DPCAP/CP via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil:

(1) Department of Defense Education Activity.

(2) Defense Human Resources Activity.

(3) Defense Microelectronics Activity.

(4) Defense Media Activity.

(5) Uniformed Services University of the Health Sciences.