# 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.

**Parent topic:** PGI 225.7003 Restrictions on acquisition of specialty metals.