(c) *Procedures.* The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at *https://www.sam.gov* for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Reporting.*

(1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at *https://dibnet.dod.mil* the information in paragraph (d)(2) of this clause.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

* * * * *

[FR Doc. 2019–27824 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2019–0016]

RIN 0750–AK15

Defense Federal Acquisition Regulation Supplement: Restriction on the Acquisition of Certain Magnets and Tungsten (DFARS Case 2018–D054)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 84 FR 18156 on April 30, 2019, to implement section 871 of the National Defense Authorization Act for Fiscal Year 2019, codified at 10 U.S.C. 2533c. 10 U.S.C. 2533c prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran. Four respondents submitted public comments in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Interim Rule

1. Definitions.

• Added definitions of ''electronic device'' and ''tungsten heavy alloy'' at DFARS 225.7018–1 and the associated clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten.

• Moved definitions of ''assembly,'' ''end item,'' and ''subsystem,'' which apply to both specialty metals (DFARS 225.7003) and certain magnets and tungsten (DFARS 225.7018) from DFARS 225.7003 to DFARS 225.7001 and included them in the clause at DFARS 252.225–7052.

2. Production of tungsten. Added a description of the production of tungsten at DFARS 225.7018–2(c), to explain the applicability of the restrictions on the production of tungsten.

3. Exceptions. Since samarium-cobalt magnets are restricted under 10 U.S.C. 2533b (specialty metals) as well as 10 U.S.C. 2533c—

• Added cross references to DFARS Procedures, Guidance, and Information (PGI) at DFARS 225.7018–3 to provide guidance where the exceptions for samarium-cobalt magnets under 10 U.S.C. 2533b are more stringent than the comparable exceptions under 10 U.S.C. 2533c;

• Provided the statutory cite to 10 U.S.C. 2533b(m)(4) and added the explanation of ''required form'' at DFARS 225.7003–3 and 2352.225–7009(c)(5), in lieu of the definitions of ''required form'' at DFARS 225.7003–1 and 252.225–7009(a), because it was not actually a definition of ''required form'' and a different explanation of ''required form'' is now required for the restrictions on samarium-cobalt and neodymium-iron-boron magnets; and

• Added a tailored explanation of ''required form'' to the nonavailability exception for tungsten heavy alloy and certain magnets at DFARS 225.7018–3(d) and 252.225–7052(c)(2). No explanation of required form is necessary with regard to tungsten powder.

4. Approval level for nonavailability determination. Lowered the approval level to head of the contracting activity for individual nonavailability determinations at DFARS 225.7018–4.

B. Analysis of Public Comments

1. General.

a. Support for statute and rule.

Comment: Multiple respondents expressed support for the statute and strong implementation of the statute in the interim rule. One respondent stated support for DoD's efforts to promulgate a strong rule that will support a robust and healthy domestic industrial base, because a strong national strategic materials industry is important to national security. This respondent also supported speedy implementation of a final rule. Another respondent noted that the interim rule will shield U.S. critical resource needs from the decisions of foreign adversaries.

Response: Noted.

b. Oppose the statute and the rule.

Comment: One respondent opposed 10 U.S.C. 2533c because the respondent believed that meaningful reform is necessary to mitigate U.S. reliance on foreign-sources critical minerals. This respondent recommended that DoD withdraw the interim rule to allow reasonable opportunity for the Administration to implement its recently published plan to reduce reliance on critical minerals from adversaries.

Response: DoD is required to comply with 10 U.S.C. 2533c. Specific comments with regard to implementation of the statute will be addressed in more detail in the following analysis.

c. Relationship to specialty metal regulations.

Comment: Most respondents welcomed the use of procedures from the specialty metals regulations, to the extent that the laws are comparable. One respondent stated that this will generally support quick and fair implementation of the law. According to this respondent, because the new statute at 10 U.S.C. 2533c closely mirrors the language on specialty metals at 10 U.S.C. 2533b, the interim rule appropriately uses the procedures from the specialty metals clause, and will be better in implementation for it, because use of existing procedures minimizes adjustments for suppliers and for DoD. This respondent also stated that DoD should recognize that Congress's intent was for the two laws to operate in a complementary fashion.

Several respondents recommended defining the term ''produce'' more in line with the definition of ''produce'' from the specialty metals clause (see discussion at section 3.).

One respondent was of the opinion that this interim rule conflicts with other Federal rules, because samarium-cobalt magnets are already controlled by the specialty metals statute, and this rule established new restrictions for samarium-cobalt magnets for contractors that already comply with specialty metals requirements. According to this respondent, the statute and implementing regulations set in place new and contradictory prohibitions for those critical magnets that may have undesirable and unintended consequences.

Response: To the extent that the new statute parallels the specialty metals statute, it makes sense to implement the statute in a way that is comparable.

To the extent that the new statute imposes new restrictions on samarium-cobalt magnets, those restrictions must be applied in a way that harmonizes with the specialty metals restrictions, while fully implementing the new statute. There are other instances of overlapping restrictions (*e.g.,* ball and roller bearings may be made from specialty metals), in which case a cross-reference is included to remind affected parties of the need to comply with both sets of restrictions (see DFARS 225.7009–2(b) and 252.226–7016(e)). A similar cross-reference to the specialty metal restrictions was included in the interim rule at DFARS 225.7018–2(c) (now 225.7018–2(b)(2)) and DFARS 252.225–7052(b)(3) (now 252.225–7052(b)(2)(ii)). This rule also reformats the explanation of the term ''required form'' for specialty metals and provides a new explanation as to the meaning of ''required form'' when applied to magnets. In addition, some pointers to the DFARS PGI have been added to provide additional guidance on the interrelationship of certain exceptions to the specialty metals restrictions on samarium-cobalt magnets in 10 U.S.C. 2033b and the new restrictions on samarium-cobalt magnets in 10 U.S.C. 2533c.

2. Covered materials. 10 U.S.C. 2533c defines ''covered material'' to mean samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

a. Remove samarium-cobalt magnets from the rule.

Comment: One respondent recommended removing samarium-cobalt magnets from the interim rule and considering ways to strengthen compliance for those magnets in accordance with the specialty metals statute, rather than regulating the same commodities through two separate regulatory instruments.

Response: Samarium-cobalt magnets are covered by both 10 U.S.C. 2533b (specialty metals) and 10 U.S.C. 2533c, implemented under this rule. 10 U.S.C. 2533c applies specific separate prohibitions to samarium cobalt magnets, which must be harmonized with the restrictions of 10 U.S.C. 2533b. The specialty metals statute is generally more stringent than 10 U.S.C. 2533c, requiring melt or production in the United States or a qualifying country, rather than just prohibiting melt or production in certain covered countries (North Korea, China, Russia, and Iran). However, if an exception to 10 U.S.C. 2533b, such as nonavailability from the United States or a qualifying country, applies, then the requirement to not buy a samarium-cobalt magnet melted or produced in a covered country remains in effect, unless a magnet melted or produced in any country except a covered country is also nonavailable.

b. Define ''tungsten heavy alloy.''

Comment: One respondent requested confirmation that ''tungsten heavy alloy'' means ASTM B–777 tungsten alloys.

Response: DoD has added a definition of ''tungsten heavy alloy'' so that it is clear whether a particular tungsten product is subject to the restrictions of 10 U.S.C. 2033c. In this final rule, ''tungsten heavy alloy'' is defined at DFARS 225.7018–1 and the associated clause at DFARS 252.225–7052. The definition recognizes two standards for specific classes of tungsten heavy alloy: ASTM B777 and SAE–AMS–T–2104. However, the definition also recognizes that there may be variants of tungsten heavy alloy that do not meet one of the standards for a specified class of tungsten heavy alloy, but are nevertheless in the tungsten heavy alloy family if the material contains at least 90 percent tungsten, combined with other metals such as nickel-iron or nickel-copper, and has a density of at least 16.5 g/cm3.

c. Add ''tantalum.''

Comment: One respondent recommended adding tantalum as a covered material, because this requirement is in the Senate and House versions of the NDAA for FY 2020 and is therefore ''virtually certain to become law soon.''

Response: DoD is unable to include tantalum in the DFARS until a law is enacted amending 10 U.S.C. 2533c to add tantalum as a covered material.

3. Melted or produced. With some exceptions, 10 U.S.C. 2533c prohibits procuring any covered material ''melted or produced'' in any covered country.

a. Define ''melted.''

Comment: One respondent requested confirmation that ''melted'' means ''Converting a metal stock to liquid form for the purpose of forming shapes that can subsequently undergo further processing into further forms.''

Response: The dictionary definition of ''melted'' is sufficiently clear, without need for further definition.

b. Coverage point for magnets.

Comment: One respondent stated that the coverage point in the interim rule for magnets is correct and well-considered, *i.e.,* the melting of samarium with cobalt to produce the samarium-cobalt alloy or melting of neodymium with iron and boron to produce the neodymium-iron-boron alloy, and all subsequent phases of production of the magnets shall not occur in a covered nation. According to this respondent, although the first few steps of the supply chain for these rare

earth magnets are overwhelmingly reliant on Chinese sources, for alloy and magnet manufacturing there is a robust and competitive non-Chinese market capable of meeting supply needs of DoD and of the commercial marketplace.

Response: DoD selected this coverage point for magnets as being in compliance with the statutory prohibition on the melting and production of magnets in a covered country.

c. Meaning of ''produced'' for tungsten.

Comment: Several respondents noted that the rule did not address the production process for tungsten. One respondent provided further details with regard to production of tungsten. According to the respondent, tungsten metal powder and tungsten heavy alloy are not manufactured through a melting process, but through production processes in which the dissolution/digestion process of converting tungsten ore and ammonium paratungstate into refined tungsten powder are the key, value added ''melt-equivalent'' steps. Therefore, the respondent suggested defining ''produce'' for tungsten (similar to the definition in the specialty metals clause) as (i) atomization; (ii) calcination and reduction into powder; or (iii) final consolidation of non-melt derived metal powders.

Response: This recommended description of the production of tungsten and tungsten heavy alloy has been added in the final rule at DFARS 225.7018–2(c) and in the clause DFARS 252.225–7052.

d. Meaning of ''produced'' for tantalum.

Comment: One respondent also addressed the production processes of tantalum.

Response: This comment is outside the scope of this case, because tantalum is not a covered material under 10 U.S.C. 2533c.

4. Nonavailability determination. 10 U.S.C. 2533c provides an exception if the Secretary of Defense determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

a. Appropriate approval level for nonavailability determinations.

Comment: One respondent considered the nonavailability determination process in the interim rule to be workable and appropriate. According to this respondent, DoD has struck a smart balance in determining the officials that can issue a nonavailability determination. The respondent recommended that DoD should retain this level of accountability in the final rule.

Another respondent with a less optimistic view on the availability of covered materials from non-Chinese sources considered the nonavailability determination process in the interim rule to be unnecessarily complex and burdensome. According to this respondent, limiting authority to grant individual determinations to five officials other than the Secretary of Defense and limiting the class nonavailability determination to one additional official is unwarranted and will grind the acquisition process to a halt. This respondent recommended that the Secretary of Defense make a nonavailability determination that applies to all DoD procurements, or grant contracting officers the authority to make nonavailability determinations, with both options relying on Federal Government studies and reports to date. This respondent was of the opinion that DoD does not have to immediately cut off the supply chain of critical minerals and cause major disruptions.

Response: In this final rule, DoD has made the head of the contracting activity the approving official at DFARS 225.7018–4(a) for individual nonavailability determinations, and does not limit further redelegation of this authority. However, USD(A&S)DASD for Industrial Policy still requires a copy of each individual nonavailability determination with supporting documentation and notification when individual waivers are requested, but denied. Because of the significant impact that a class determination of nonavailability may have, DoD has retained accountability at the USA(A&S) level and has made no changes to the requirements of the interim rule at DFARS 225.7018–4(b).

b. Criteria.

Comment: One respondent recommended that DoD should clarify the process and criteria for nonavailability determinations and explain to contractors what information DoD may require in support of such determinations.

Response: There are currently many source restrictions that allow an exception for nonavailability (such as the Buy American statute, the Berry Amendment at 10 U.S.C. 2533a, the specialty metal restrictions at 10 U.S.C. 2533b, and various appropriations act domestic source restrictions). This determination is not substantively different. As specified at DFARS 225.7018–3(d), the restriction does not apply if the authorized agency official concerned 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.'' Any entity seeking a nonavailability determination must provide the Government with sufficient data and a rationale to justify such a determination.

c. Public notice.

Comment: One respondent suggested that the nonavailability procedures can be improved by requiring expanded public notice to potential suppliers for nonavailability determinations both for class determinations and individual determinations. The respondent also recommended a mechanism for suppliers to appeal to DoD when they believe that a determination has been wrongly granted or has been rendered superfluous by the establishment of a new compliant source of supply.

Response: In an effort to balance the complexity and burden of the process against the expected benefits of additional public scrutiny and input, DoD considers that the requirements of the interim rule for publication of a notice of class determinations on the Federal Business Opportunities website is sufficient.

5. Flowdown.

Comment: One respondent stated that DoD should clarify whether or not it is mandatory to flow down the clause at DFARS 252.225–7052.

Response: The interim rule does not require flowdown of the clause at DFARS 252.225–7052, because the intent was that the prime contractor is responsible for delivery of a compliant product. However, since 10 U.S.C. 2533c(b) specifically states applicability to prime contracts and subcontracts at any tier, the final rule has been amended to specify flowdown in the clause at DFARS 252.225–7052.

6. Define ''end item.''

Comment: One respondent recommended confirmation that the term ''end item'' means ''The final production product when assembled or completed, and ready for issue, delivery, or deployment'' (*i.e.,* 10 U.S.C. 2533b(m)(9)).

Response: 10 U.S.C. 2533c specifies that the term ''end item'' has the meaning given in 10 U.S.C. 2533b(m). This has been clarified in the final rule by moving the definition of ''end item'' from 225.7003–1 to 225.7001, so that it is applicable to both 225.7003 (specialty metals) and 225.7018 (certain magnets and tungsten) and adding the definition to the clause at DFARS 252.225–7052. In addition, DoD similarly moved the definitions of ''assembly'' and ''subsystem'' to DFARS 225.7001 and added them to the clause at 252.225–7052.

7. Initial regulatory flexibility analysis. One respondent had several comments on the initial regulatory flexibility analysis (IRFA). For analysis of these comments, see section VI. of this preamble.

C. Other Changes

1. Definitions.

• Included the full definitions of ''bearing component,'' ''component,'' ''end product,'' and ''structural component of a tent'' at DFARS 225.7001, instead of referencing the definitions in the associated clauses.

• Included the full definitions of ''alloy,'' ''commercial derivative military article,'' ''electronic component,'' ''high performance magnet,'' ''produce,'' ''specialty metal,'' and ''steel'' in DFARS 225.7003–1, rather than just referencing the definitions in the associated specialty metal clauses at DFARS 252.225–7008 and 252.225–7009.

• Moved the definition of ''covered country'' into correct alphabetical order at DFARS 225.7018–1 and 252.225–7052(a).

2. Updated acronym. Revised ''USD(AT&L)'' to read ''USD(A&S)'' in several places at DFARS 225.7003–3.

3. Nonavailability determination. Corrected wording at DFARS 225.7018–3(d) to more accurately state the conditions for a nonavailability determination.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

The interim rule added a new clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, which does not apply to acquisitions below the simplified acquisition threshold (SAT), in accordance with 41 U.S.C. 1905, but applies to contracts for the acquisition of commercial items, except as provided in the statute at 10 U.S.C. 2533c(c)(3). There is no change to the clause or the applicability of the clause in the final rule.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD did not make that determination. Therefore, this rule will not apply below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment ((USD) (A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial items, including COTS items, if otherwise applicable.

10 U.S.C. 2533c specifically exempts the acquisition of an end item that is a COTS item, other than a COTS item that is 50 percent or more tungsten by weight, or a mill product that has not been incorporated into an end item, subsystem, assembly, or component. Although 10 U.S.C. 2533c does not refer to 10 U.S.C. 2375 and provide that, notwithstanding those statutes it shall be applicable to contracts for the procurement of commercial items, it is the clear intent of the statute to cover commercial items, other than those specifically exempted. Therefore, DoD has signed a determination of applicability to acquisitions of commercial items, except as exempted in the statute.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because this rule is issued with respect to a national security function of the United States as discussed in section VIII of preamble of the interim rule published at 84 FR 18156. No comments were received on the designation.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows: This rule is required to implement section 871 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2019, which is codified at 10 U.S.C. 2533c. The objective of the rule is to prohibit acquisition of sensitive materials (*i.e.* samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished components containing tungsten heavy alloy melted or produced in North Korea, China, Russia, or Iran).

One respondent had several comments in response to the initial regulatory flexibility analysis.

Comment: The respondent noted that the statement that ''DoD expects there will be some adjustment period as U.S. and other non-prohibited sources comes on line'' ignores the obvious significant risk of disruption this new prohibition will cause DoD and its suppliers.

Response: The IRFA acknowledged that there will be an adjustment period. There is, however, an exception for nonavailability, which may initially be utilized until more non-prohibited sources become available. The final rule has also facilitated nonavailability determinations by reducing the approval level for individual determinations to the head of the contracting activity, with power of redelegation.

Comment: The respondent did not agree with the assertion that there are no

projected reporting or recordkeeping requirements as a result of this rule.

Response: The rule does not impose any specific reporting or recordkeeping requirements. It does not specify what records must be kept, or for how long. It is up to the Contractor how to track compliance with the rule, without any additional recordkeeping requirements imposed by the Government.

Comment: According to the respondent, the rule conflicts with other Federal rules.

Response: As stated in the response in section 1.c., the fact that two statutes, and the regulations implementing them, apply different restrictions to the same item does not create a conflict. Rather, the overlapping restrictions must be applied together in harmony, so that, in any given circumstance, the effective requirements can be determined.

Based on Federal Procurement Data System data for FY 2017, DoD awarded in the United States 13,400 contracts that exceeded $250,000 and were for the acquisition of manufactured end products (excluding those categories that could not include samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten (such as clothing and fabrics, books, or lumber products)). These contracts were awarded to 5,073 unique entities, of which 3,074 were small entities. It is not known what percentage of these awards involved samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten, or what lesser percentage might involve such materials from China, North Korea, Russia, or Iran.

As discussed above, there are no projected reporting or recordkeeping requirements in this rule. However, based on this rule, there may be compliance costs to track the origin of covered materials.

DoD is exempting acquisitions equal to or less than the SAT in accordance with 41 U.S.C. 1905. DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published in the **Federal Register** at 84 FR 18156 on April 30, 2019, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7001 to read as follows:

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 225.7007, the term means an article, material, or supply incorporated directly into an end product.

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.

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.

■ 3. Amend section 225.7003–1 by—

■ a. Removing paragraphs (a) and (c);

■ b. Removing the paragraph (b) designation for the definition ''Automotive item''; and

■ c. Adding, in alphabetical order, the definitions of ''Alloy'', ''Commercial derivative military article'', ''Electronic component'', ''High performance magnet'', ''Produce'', ''Specialty metal'', and ''Steel''.

The additions read as follows:

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).

* * * * *

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.

■ 4. Amend section 225.7003–3 by—

■ a. Revising paragraph (b)(5) introductory text; and

■ b. In paragraphs (b)(5)(ii) introductory text, (b)(5)(ii)(A) and (B) introductory text, (c)(2), (d) introductory text, (d)(1) and (2) introductory text, and (d)(2)(ii), removing ''USD(AT&L)'' wherever they appear and adding ''USD(A&S)'' in its place.

The revision reads as follows:

225.7003–3 Exceptions.

* * * * *

(b) * * *

(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 section, 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. 2533b(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).

* * * * *

■ 5. Amend section 225.7018–1 by–

■ a. Redesignating the definitions of ''Covered country'' and ''Covered material'' in alphabetical order; and

■ b. Adding, in alphabetical order, the definitions of ''Electronic device'' and ''Tungsten heavy alloy''.

The additions read as follows:

225.7018–1 Definitions.

* * * * *

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).

■ 6. Amend section 225.7018–2 by—

■ a. Redesignating paragraphs (b)(1) and (2) as (b)(i) and (ii);

■ b. Redesignating paragraph (b) introductory text as paragraph (b)(1);

■ c. Redesignating paragraph (c) as paragraph (b)(2); and

■ d. Adding a new paragraph (c).

The addition reads as follows:

225.7018–2 Restriction.

* * * * *

(c) For production of tungsten metal powder and tungsten heavy alloy, this restriction includes—

(1) Atomization;

(2) Calcination and reduction into powder;

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

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

■ 7. Amend section 225.7018–3 by—

■ a. Revising paragraph (c)(1) introductory text;

■ b. In paragraph (c)(1)(ii), removing ''had'' and adding ''has'' in its place;

■ c. Revising paragraph (c)(2); and

■ d. Revising paragraph (d).

The revisions read as follows:

225.7018–3 Exceptions.

* * * * *

(c) * * *

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

* * * * *

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018–3(c)(1)(ii) with regard to samarium-cobalt magnets used in electronic components); or

* * * * *

(d) If the authorized agency official concerned 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 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 this 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.

■ 8. Amend section 225.7018–4 by—

■ a. Revising paragraph (a)(1);

■ b. Removing paragraph (a)(3);

■ c. Redesignating paragraph (a)(4) as paragraph (a)(3); and

■ d. In the newly redesignated paragraph (a)(3), removing ''PGI 225.7018–4(a)(4)'' and adding ''PGI 225.7018–4(a)(3)'' in its place.

The revision reads as follows:

225.7018–4 Nonavailability determination.

(a) * * *

(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).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 252.225–7009 by—

■ a. Removing the clause date ''(OCT 2014)'' and adding ''(DEC 2019)'' in its place;

■ b. In paragraph (a), removing the definition of ''Required form''; and

■ c. Revising paragraph (c)(5)(iii).

The revision reads as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

(c) * * *

(5) * * *

(iii) The required form. In accordance with 10 U.S.C. 2533b(m)(4), the term ''required form'' in this clause 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 this contract.

* * * * *

■ 10. Amend section 252.225–7052 by—
■ a. Removing the clause date ''(APR 2019)'' and adding ''(DEC 2019)'' in its place;
■ b. In paragraph (a), redesignating the definitions of ''Covered country'' and ''Covered material'' in alphabetical order, and adding the definitions, in alphabetical order, of ''Assembly'', ''Commercially available off-the-shelf item'', ''Component'', Electronic device'', ''End item'', ''Subsystem'', and ''Tungsten heavy alloy'';
■ c. Redesignating paragraphs (b)(2)(i) and (ii) as (b)(2)(A) and (B);
■ d. Redesignating paragraph (b)(2) introductory text as (b)(2)(i);
■ e. Redesignating paragraph (b)(3) as paragraph (b)(2)(ii);
■ f. Adding a new paragraph (b)(3);
■ g. In paragraph (c)(1)(i)(B), removing ''had'' and adding ''has'' in its place;
■ h. Revising paragraph (c)(2); and
■ i. Adding a new paragraph (d).

The additions and revision read as follows:

252.225–7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

* * * * *

(a) * * *

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.

Commercially available off-the-shelf item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any item supplied to the Government as part of an end item or of another component.

* * * * *

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.

End item means the final production product when assembled or completed and ready for delivery under a line item of this contract.

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

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).

(b) * * *

(3) 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.

(c) * * *

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018–4 of the Defense Federal Acquisition Regulation Supplement, that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(i) For 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 this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial items, unless an exception in paragraph (c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

* * * * *

[FR Doc. 2019–27825 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2019–0069]

RIN 0750–AK75

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2019–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTA) as determined by the United States Trade Representative (USTR). The trade agreements thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds (84 FR 70615, December 23, 2019):