Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China.

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PART 225—FOREIGN ACQUISITION

■ 4. Add sections 225.7021, 225.7021–1, 225.7021–2, 225.7021–3, and 225.7021–4 to subpart 225.70 to read as follows:

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Sec.

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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 items.

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.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add sections 252.225–7057 and 252.225–7058 to read as follows:

252.225–7057 Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

As prescribed in 225.7021–4(a), use the following provision:

Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China (Aug 2022)

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

Covered contract and *covered entity* have the meaning given in the clause 252.225–7058, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

(b) *Prohibition on award.* 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.), DoD may not award a contract to the Offeror if it is a covered entity and proposes to employ one or more individuals who will perform work in the People's Republic of China on a covered contract, unless the Offeror has disclosed its use of workforce and facilities in the People's Republic of China.

(c) *Preaward disclosure requirement.* At the time of submission of an offer for a covered contract, an Offeror that is a covered entity shall provide disclosures to include—

(1) The proposed use of workforce on a covered contract or subcontract, if the Offeror employs one or more individuals who perform work in the People's Republic of China;

(2) The total number of such individuals who will perform work in the People's Republic of China; and

(3) A description of the physical presence, including street address or addresses, in the People's Republic of China, where work on the covered contract will be performed.

(End of provision)

252.225–7058 Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China.

As prescribed in 225.7021–4(b), use the following clause:

Postaward Disclosure of Employment of Individuals Who Work in The People's Republic of China (Aug 2022)

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

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

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.

(b) *Disclosure requirement.* (1) 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.), DoD may not award, extend, or exercise an option on a covered contract with a covered entity unless such covered entity submits each required disclosure of its use of workforce and facilities in the People's Republic of China, if it employs one or more individuals who perform work in the People's Republic of China on a covered contract.

(2) If the Contractor is a covered entity, the Contractor shall disclose for the Government's fiscal years 2023 and 2024, the Contractor's employment of one or more individuals who perform work in the People's Republic of China on any covered contract. The disclosures shall include—

(i) The total number of such individuals who perform work in the People's Republic of China on the covered contracts funded by DoD; and

(ii) A description of the physical presence, including street address or addresses in the People's Republic of China, where work on the covered contract is performed.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in all subcontracts that meet the definition of a covered contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2020–0035]

RIN 0750–AK94

Defense Federal Acquisition Regulation Supplement: Restriction on Acquisition of Tantalum (DFARS Case 2020–D007)

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 2020 that prohibits acquisition of tantalum metals and alloys from North Korea, China, Russia, and Iran.

DATES: Effective August 25, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule finalizes an interim rule that revised the DFARS to implement section 849 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92) (10 U.S.C. 2533c). Section 849 adds tantalum to the definition of ''covered materials'' in 10 U.S.C. 2533c. With some exceptions, 10 U.S.C. 2533c prohibits the acquisition of any covered material melted or produced in any covered country (North Korea, China, Russia, or Iran), or any end item, manufactured in any covered country, that contains a covered material.

DoD published an interim rule in the **Federal Register** at 85 FR 61500 on September 29, 2020, to implement section 849 of the NDAA for FY 2020. Nine 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

DoD made the following changes in the interim rule:

1. At DFARS 225.7018–2(c), the applicability of the production phases for tantalum metals and alloys is revised to provide clarity by removing the reference to the inclusion of the reduction of tantalum chemicals such as oxides, chlorides, or potassium salts, to metal powder. A reference to the applicability of tantalum metals of any kind and alloys to the production processing steps includes the reduction or melting of any form of tantalum is also added. Additionally, the paragraph is revised to convey that the restriction includes the subsequent production steps for the reduction or melting of any form of tantalum to create tantalum metals including unwrought, powder, mill products, and alloys.

2. For consistency with the plain language of the exact statutory text in accordance with section 849 of the NDAA for FY 2020 and 10 U.S.C. 2533c, at DFARS 225.7018–3(c) and DFARS 252.225–7052(c)(1), the phrase ''of an end item that is'' is replaced with the phrase ''of an end item containing a covered material that is''.

3. References to tantalum ''metal and alloys'' in the definition of covered material in the interim rule are revised to ''metals and alloys'' in the final rule for consistency with the exact statutory text at 10 U.S.C. 2533c.

B. Analysis of Public Comments

1. Strong Support for the Rule

Comment: Two respondents strongly supported the interim rule. A respondent noted that the quantity of tantalum going into the defense industry is a manageable quantity and will have a negligible impact on U.S. businesses while affording the U.S. military a protection similarly enjoyed by the People's Republic of China with respect to tantalum products that are of U.S. origin. A respondent applauded the comprehensive scope of the rule regarding tantalum production, which is necessary to shield DoD weapon systems from unreliable sources.

Response: DoD acknowledges the support for the rule.

2. Impact on Business

a. Impact on Customers

Comment: A respondent commented that this rule will not be a problem. Tantalum going into the U.S. defense industry annually is a perfectly manageable quantity to make sure that Chinese material does not enter the U.S. defense industries final applications. Another respondent commented that this policy would bleed into civilian U.S. manufacturing supply chains. As a result of this rule and other non-conflict material restrictions on tantalum from Africa, there will be insufficient alternative acceptable tantalum units for the U.S. industry in the global market. The respondent further stated this will lead to a higher price, potential raw material shortfalls, and reduced profits and competitiveness for U.S. manufacturers and end products exported.

Response: The rule is required to implement section 849 of the NDAA for FY 2020. It is a matter of national security to reduce U.S. dependence on the covered countries specified in 10 U.S.C. 2533c, because tantalum is an important element in the supply chain for the production of both DoD military systems and nonmilitary systems that DoD uses.

b. Impact on Manufacturers

Comment: A respondent stated this rule only focuses on defense applications; the amount of overall tantalum is manageable. Another respondent expects an initial period of higher pricing and supply chain impacts after which the tantalum markets will adjust. One respondent conveyed concerns that damage to competitiveness and efficiency due to the rule could lead to a relocation of manufacturing outside the United States and thereby reduce U.S. strength in critical manufacturing sectors. Members of the respondent's organization supported a retaliatory approach to China on tantalum policy, while the other half of the members believed it was counterproductive, as it would negatively impact U.S. civilian-use manufacturers and exporters.

Response: DoD acknowledges the respondent's concern with initial impacts to U.S. manufacturers. The implementation of this prohibition is expected to decrease DoD's dependence on covered materials that originate in covered countries as a matter of national security. Tantalum is an important element in the supply chain for the production of both U.S. military systems and nonmilitary systems that DoD uses.

3. Metals Trade Industry

Comment: A respondent stated that they did not see the interim rule affecting the metals trade and metals industry generally, either domestically or internationally. The respondent further stated the price of tantalum will not increase since the amount of tantalum in question is minimal annually. Accordingly, the orders placed would separate defense and commercial consumer applications, will be balanced, and will not negatively impact consumers financially. The respondent also stated that U.S. companies are not allowed to sell tantalum to China and this interim rule is exactly the same.

Response: DoD acknowledges the respondent's position and agrees that the impact of the rule on the metals industry will have minor impacts both domestically and internationally.

4. Broader International Trade

a. Potential Future U.S.-Wide Restriction

Comment: A respondent discussed the overall impact of the interim rule on broader international trade and a

potential U.S.-wide restriction on the acquisition of tantalum in the future, from the designated regions or a potential change to consumer purchasing policy. The respondent also stated the importance of ensuring the scope of the rule remained only for tantalum for defense applications, since the defense tantalum market is small and manageable, and it should not be expanded further since U.S. companies do sell tantalum finished products to Chinese customers. The respondent further stated that China does not allow tantalum of U.S. origin.

Response: The defense industry consumption of tantalum units is a small portion of the tantalum market with regard to global consumption. This rule is not going to impact the tantalum market as a whole.

b. Potential Price Increases for Tantalum in the U.S. Supply Chain

Comment: Several respondents discussed the impact on broader international trade as a result of the more restrictive implementation of the statute with regard to the criteria for the exception applicability to the entire end item versus the covered material within the end item. These respondents further stated the interim rule will have negative impacts to international trade, increased administrative burden on industry, and increased costs to the Government. A respondent stated that tantalum prices from non-covered countries have increased and may continue to do so. The respondent further stated the interim rule's applicability to DoD products may increase costs due to manufacturer's dual use of tantalum in the commercial and defense industries and the subsequent requirement for segregation of products to track the defense products in accordance with the statutory requirements.

Response: The rule implements section 849 of the NDAA for FY 2020. Since the defense tantalum market is a small portion of the overall global market, DoD anticipates minimal impacts to international trade and minimal increased administrative burden on industry.

5. Exception

a. Entire End Item and Electronic Device

Comment: A few respondents argued that the interim rule incorrectly applied an exception to the prohibition on procurement of covered materials found at 10 U.S.C. 2533c(c)(3). The interim rule provides an exception for end items that are also an electronic device. The respondents argued that this misapplies the statute, narrows the exception beyond what the statute intended, and makes part of the language of the statute superfluous.

Response: DoD does agree that the omission of ''containing a covered material'' changes the underlying intent or application of the rule. Of note, the restriction in 10 U.S.C. 2533c is modeled on the domestic preference in 10 U.S.C. 2533b, with similar exceptions related to commercially available off-the-shelf (COTS) items and electronic components and devices. Based on the similar construction of these statutes, DoD interprets the exception for ''electronic devices'' pursuant to DFARS 225.7018–3 to include components embedded in other end items. For example, a missile or munition purchased by DoD may contain tantalum units in a capacitor. The same missile or munition may contain tantalum or tungsten units in an explosively-formed penetrator. The tantalum units embedded in the capacitor would be covered by the ''electronic devices'' exception, but the tantalum or tungsten units in the explosively-formed penetrator would not be covered by the exception. DoD believes that the application of the exception provided in this example aligns with congressional intent, providing an exception for those products with significant commercial market exposure (*e.g.,* a capacitor) while maintaining coverage for military-unique products (*e.g.,* an explosively-formed penetrator). DoD further addresses the respondents' feedback on these specific aspects of the rule in the category of comments at paragraph 8c, entitled clarification of the rule.

b. Prior Melting Production of Tantalum Raw Materials

Comment: A respondent asked that the interim rule be amended to clarify that the prohibition on procuring any covered material melted or produced in any covered country applies only to the melting or production of tantalum metals and alloys that immediately precedes delivery to the DoD customer or a supplier's higher-tier contractor customer. Two respondents stated that because tantalum may be melted or produced or re-melted or reproduced multiple times in the supply chain life cycle, the only rational reading of 10 U.S.C. 2533c is to conclude that the most recent melting or manufacture of the covered material prior to transfer to DoD or to a higher-tier contractor customer does not occur in a covered country. In addition, another respondent further stated the interim rule did not contain the phrase ''and melting'' with regard to the prohibition of the production of tantalum metal and alloys, including the reduction of tantalum chemicals such as oxides, chlorides, or potassium salts, to metal powder and all subsequent phases of the production of tantalum metal and alloys, such as consolidation of metal powders and melting. The respondent requested the rationale for the omission of ''and melting'' in the implementation of section 849 of the NDAA for FY 2020 in the interim rule.

Response: DoD acknowledges that at the time the interim rule was issued, 10 U.S.C. 2533c was meant to apply to melting or manufacture of the covered material. However, section 844 of the NDAA for FY 2021 (Pub. L. 116–283) passed subsequent to the publication of the interim rule. In section 844, Congress amended 10 U.S.C. 2533c(a)(1) from ''. . . procuring any covered material melted or produced in any covered nation. . .'' to ''. . . procuring any covered material mined, refined, separated, melted or produced in any covered nation. . .''. The current rulemaking effort applies only to the changes mandated by section 849 of the NDAA for FY 2020. Section 844 of the NDAA for FY 2021 has an effective date five years after the date of enactment and will be implemented via future rulemaking under DFARS Case 2021–D015. DoD has deleted the reference to ''chemicals such as oxides, chlorides, or potassium salts, to metal powder'' and simplified the language to include ''reduction or melting of any form''. DoD has also clarified the final forms of tantalum metals as ''including unwrought, powder, mill products, and alloys.''

c. Tantalum Powder/Raw Materials

Comment: A respondent requested that the draft rule be revised to exclude tantalum powder from the definition of ''covered material.'' The respondent argued that Congress did not intend to place restrictions on tantalum powder as neither 10 U.S.C. 2533c nor section 849 of the NDAA for FY 2020 mention tantalum powder specifically, but rather refer to ''tantalum metals and alloys.''

Response: DoD concurs that the statute at 10 U.S.C. 2533c on its face does not include tantalum powder as a covered material. The final rule clarifies that tantalum powder is included in the rule to further explain that tantalum powder is also considered a metal and therefore, tantalum powder also would be restricted. In addition, the rule applies the restriction to cover all subsequent phases of production of tantalum metals and alloys.

6. Tantalum Capacitors

Comment: A respondent noted that tantalum is a key component of capacitors used in military and commercial applications, and that the United States is dependent on foreign countries, including China, to acquire tantalum and tantalum capacitors. Therefore, any implementation of supply constraints should be considered judiciously to guarantee the availability of tantalum capacitors for U.S. applications.

Response: DoD is aware of U.S. dependence on foreign countries to acquire tantalum and tantalum capacitors for military and commercial use. DoD continues to work with allied nations to strengthen this part of the foreign supply chain for strategic and critical materials such as tantalum. Additionally, DoD has mandated programs in place to strengthen the industrial base by funding projects to increase domestic capability to produce products, including strategic and critical materials such as tantalum, for military use.

7. Statutory Implementation and Interpretation

Comment: A respondent asked that the final rule be revised to correct an error within the interim rule implemented in DFARS clause 252.225–7052, specifically the omission of the 10 U.S.C. 2533c(c)(3) statutory phrase ''containing a covered material.'' The respondent proposed two options to correct the interim rule. Another respondent stated that the interim rule unreasonably interprets 10 U.S.C. 2533c and ''is likely to have a significant impact on acquisitions by the DoD of end items that include high performance, low weight tantalum capacitors.'' In summary, the respondent stated the interim rule disregards language that makes the prohibitions and exceptions created by the statute apply to both prime contracts and subcontracts at any tier.

Response: As to the respondent's concerns regarding omission of the 10 U.S.C. 2533c(c)(3) statutory phrase ''containing a covered material,'' as stated in DFARS 225.7018–5, unless an acquisition of certain magnets, tantalum, and tungsten is completed outside the United States for use outside the United States, or an official nonavailability determination has been made, DFARS clause 252.225–7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, shall be included in solicitations and contracts, to include Federal Acquisition Regulation (FAR) part 12 commercial item acquisitions, that exceed the simplified acquisition threshold. DFARS 252.225–7052(b)(1) identifies that the restrictions listed apply to the contractor, who ''shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).'' Moreover, DFARS 252.225–7052(d) directs the contractor to insert the substance of the clause, including paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial products and commercial services, unless an exception in paragraph (c) of this clause applies. Therefore, DFARS clause 252.225–7052 does apply restrictions and exceptions to both contractors and subcontractors.

8. Recommended Revisions

a. One-Time Waiver

Comment: A respondent recommended a one-time waiver to address material on hand and in process including alloy already processed. The respondent further stated that manufacturers normally procure tantalum one year in advance for forecasted usage and may purchase multiple years of supply at that time that may contain tantalum from covered countries. The respondent further stated that if the Government does not permit manufacturers to use in-process tantalum from covered countries for military products, the costs to the Government will likely rise in order to compensate manufacturers for the noncompliant tantalum procured prior to the implementation of the prohibition.

Response: The interim rule was published on September 29, 2020, implementing section 849 of the NDAA for FY 2020. Implementation of this prohibition was urgent, because decreasing DoD's dependence on covered materials that originate in covered countries is a matter of national security. Tantalum is an important element in the supply chain for production of both U.S. military systems and nonmilitary systems that DoD uses. A shortage of supply of these covered materials would therefore hinder maintenance and replacement of many DoD military systems and would also have a negative impact on the broader industrial base upon which DoD depends. Section 849 of the NDAA for FY 2020 mandates compliance with this prohibition as implemented in the interim rule published on September 29, 2020, and in effect on October 1, 2020. In addition, FAR and DFARS changes apply to solicitations issued on or after the effective date of the change unless otherwise specified (see FAR 1.108(d)).

b. Add Compliance Incentive

Comment: A respondent recommended the addition of a compliance incentive for proposals priced with compliant materials versus noncompliant materials for the purposes of proposal evaluations.

Response: Section 849 of the NDAA for FY 2020 does not include a compliance incentive requirement for the prohibition; therefore, none is included in the rule.

c. Clarification of the Rule

Comment: Several respondents recommended revisions to clarify the interim rule. A respondent commented that the interim rule is costly to implement and requested the interim rule be modified to clarify that end items supplied to DoD containing a covered material that is an electronic device are excepted from the prohibition.

A respondent also recommended that DoD modify the interim rule at DFARS clause 252.225–7052, paragraph (c)(1) and DFARS 225.7018–3(c). Specifically, the respondent recommended that DoD replace the phrase ''an end item that is'' with the phrase ''a covered material (as an end item or incorporated into an end item) that is.'' As an alternative, the respondent further recommended that the phrase ''an end item that is'' be replaced with language to match the exact statutory text ''an end item containing a covered material that is.''

Additionally, a respondent recommended that DoD clarify that DFARS clause 252.225–7052 applies only to the melting and production of tantalum metal and alloys as part of the DoD supply chain and not to prior melting or production or to tantalum raw materials.

Another respondent stated that the prohibition in the interim rule applies with regard to a prime contractor and prohibits contractors from incorporating a COTS item or an electronic device from a subcontractor into an end item delivered to DoD, unless that item is a COTS item or an electronic device. Subsequently, the respondent stated as an example, the rule as implemented prohibits a subcontractor from acquiring a tantalum capacitor made in China, and a prime contractor could not incorporate that capacitor into an end item delivered to DoD. The respondent recommended a revision to the interim

rule at DFARS 225.7018–2 and the clause 252.225–7052, paragraph (a) to clarify that DoD would neither be acquiring a covered material melted or produced in a covered country, nor an end item manufactured in any covered country, that contains a covered material, unless the end item is itself manufactured in a covered country. Another respondent stated that the statute prohibits the Government from procuring ''any end item that contains a covered material manufactured in any covered nation, except as provided by the clause 252.225–7052(c).''

A respondent indicated the language of the statute at 10 U.S.C. 2533c states that an end item cannot contain a covered material manufactured in any covered nation; however, the clause 252.225–7052 prohibits a contractor from delivering any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c). According to the respondent the clause suggests that a contractor may deliver an end item containing covered material so long as that end item is not manufactured in a covered country, creating an inconsistency with the clause and the statute. The respondent recommended a revision to clarify whether the phrase ''manufactured in any covered country'' modifies ''end item'' or ''covered material.''

The respondents further requested that the interim rule be rewritten to comply with the statute such that the term ''electronic device'' modifies the term ''covered material'', not ''end item'', to ensure that in the event an end item contains a covered material and the covered material is an electronic device, the end item will not be subject to the general restriction contained in the draft rule.

Response: DoD acknowledges and concurs with the following recommended revision at DFARS clause 252.225–7052, paragraph (c)(1) and 225.7018–3(c): to remove the phrase ''of an end item that is'' and replace it with the phrase ''of an end item containing a covered material that is.'' DoD interprets the exception for ''electronic devices'' pursuant to DFARS 225.7018–3 to include components embedded in other end items and does not see the need to clarify further that end items supplied to DoD containing a covered material that is an electronic device are excepted from the prohibition in accordance with 10 U.S.C. 2533c(c)(3). As the current rulemaking effort applies only to the changes mandated by section 849 of the NDAA for FY 2020, any additional expansion, on the prohibition to clarify that the clause 252.225–7052 applies only to the melting and production of tantalum metals and alloys as part of the DoD supply chain and not to prior melting or production or to tantalum raw materials, would be out of scope.

DoD does not concur with the recommendation to revise DFARS 225.7018–2 and the clause 252.225–7052, paragraph (a), to clarify that unless the end item is itself manufactured in a covered country, DoD would be acquiring neither a covered material melted or produced in a covered country nor an end item manufactured in any covered country that contains a covered material, unless the end item is itself manufactured in a covered country. DoD also does not concur with the recommendation for a revision to clarify whether the phrase ''manufactured in any covered country'' modifies ''end item'' or ''covered material.'' The interim rule as implemented at 225.7018–2(a), in accordance with section 849 of the NDAA for FY 2020 and 10 U.S.C. 2533c, specifically mandates not acquiring any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material.

d. Extension for Comment Due Date

Comment: A respondent requested an extension to the comment period for 30 days due to further analysis required and the holiday season.

Response: DoD acknowledges the extension request; however, the public comment period was not extended.

9. Outside the Scope of the Rule

Comment: A respondent inquired what documentation is required to import tantalum into the United States and proof of origin.

Response: This final rule is implementing restrictions on the acquisition of tantalum in accordance with section 849 of the NDAA for FY 2020. Instructions on documentation for importing tantalum and proof of origin are outside the scope of this rule.

C. Other Changes

At DFARS 212.505, Applicability of certain laws to contracts for the acquisition of COTS items, paragraph (b) is added to state that paragraph (a)(1) of 10 U.S.C. 2533c is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7018–3(c)(1). The previously undesignated paragraph at 212.505 is designated as paragraph (a).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the clause at DFARS 252.225–7052, Restriction on Acquisition of Certain Magnets, Tantalum, and Tungsten, to implement section 849 of the NDAA for FY 2020. DFARS 252.225–7052 does not apply to acquisitions at or below the simplified acquisition threshold but applies to contracts for the acquisition of commercial items, except as provided in the statute at 10 U.S.C. 2533c(c)(3). Therefore, DoD has signed a determination of applicability to acquisitions of commercial items, except for COTS items to the extent exempted in the statute.

IV. Expected Impact of the Rule

This final rule adds tantalum ''metals'' to the restriction at DFARS 225.7018 and also incorporates the term into the definition of ''covered material.'' This rule further explains the applicability of the restriction on the production of tantalum metals of any kind and alloys in addition to the reduction or melting of any form of tantalum metal. Moreover, the restriction includes the subsequent production steps for the reduction or melting of any form of tantalum to create tantalum metals including unwrought, powder, mill products, and alloys.

In addition, the rule provides an explanation of the exceptions at DFARS 225.7018–3, paragraph (c)(1)(ii) exception for commercially available off-the-shelf (COTS) items, which is not applicable to a mill product that has not been incorporated into an end item, subsystem, assembly, or component and paragraph (d)(1) meaning of nonavailability of a covered material in the required form. Although 10 U.S.C. 2533c provides that the exception to the restriction on tungsten for COTS items does not apply to a COTS item that is 50 percent or more tungsten by weight, section 849 does not add a similar condition with regard to tantalum metal and alloys.

It is a matter of national security to reduce U.S. dependence on the covered countries in accordance with the section 849 restriction, because tantalum is an important element in the supply chain for production of both U.S. military systems and nonmilitary systems that DoD uses. A shortage of supply of these covered materials would therefore hinder maintenance and replacement of

many DoD military systems and would also have a negative impact on the broader industrial base upon which DoD depends. Implementation of this prohibition will decrease DoD's dependence on covered materials that originate in covered countries in support of national security.

V. 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 not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. 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 849 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92) (10 U.S.C. 2533c). The objective of the rule is to implement the section 849 prohibition on the acquisition of tantalum metals and alloys from North Korea, China, Russia, or Iran.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

This rule will apply to an annual average of approximately 697 small entities. Based on data from the Federal Procurement Data System for FY 2019, FY 2020, and FY 2021, DoD awarded in the United States 13,204 contracts that exceeded the simplified acquisition threshold of $250,000 and were for the acquisition of manufactured end products (excluding those categories that could not include tantalum such as clothing and fabrics, books, or lumber products). These contracts were awarded to 3,447 unique entities, of which 2,090 were small entities. It is not known what percentage of these awards involved tantalum, or what lesser percentage might involve tantalum from China, North Korea, Russia, or Iran.

There are no projected reporting or recordkeeping requirements. However, there may be compliance costs to track the origin of covered materials.

DoD is exempting acquisitions equal to or less than the simplified acquisition threshold. DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

VIII. Paperwork Reduction Act

This 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 D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published in the **Federal Register** at 85 FR 61500 on September 29, 2020, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by revising paragraph (f)(x)(FF) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(x) * * *

(FF) Use the clause at 252.225–7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, as prescribed in 225.7018–5, to comply with 10 U.S.C. 2533c.

* * * * *

■ 3. Amend section 212.505 by—

■ a. Designating the section text as paragraph (a); and

■ b. Adding paragraph (b).

The addition reads as follows:

212.505 Applicability of certain laws to contracts for the acquisition of COTS items.

* * * * *

(b) Paragraph (a)(1) of 10 U.S.C. 2533c, Prohibition on acquisition of sensitive materials from non-allied foreign nations, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at 225.7018–3(c)(1).

PART 225—FOREIGN ACQUISITION

225.7018–1 [Amended]

■ 4. Amend section 225.7018–1 in paragraph (3) of the definition of ''Covered material'' by removing ''metal'' and adding ''metals'' in its place.

■ 5. Amend section 225.7018–2 by revising paragraph (c) to read as follows:

225.7018–2 Restriction.

* * * * *

(c) 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.

* * * * *

225.7018–3 [Amended]

■ 6. Amend section 225.7018–3—

■ a. In the paragraph (c) introductory text, by removing ''Of an end item'' and adding ''Of an end item containing a covered material'' in its place; and

■ b. In the paragraph (c)(1) introductory text, by removing ''PGI 225.7018–3(c)(1)(i)'' and adding ''PGI 225.7018–3(c)(1)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.225–7052 by—

■ a. Adding introductory text;

■ b. Revising the clause date;

■ c. In paragraph (a), in paragraph (3) of the definition of ''Covered material'', removing ''metal'' and adding ''metals'' in its place;

■ d. Revising paragraph (b)(3); and

■ e. In the paragraph (c)(1) introductory text, removing ''To an end item'' and

adding ''To an end item containing a covered material'' in its place.

The addition and revisions read as follows:

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

As prescribed in 225.7018–5, use the following clause:

Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten (Aug 2022)

* * * * *

(b) * * *

(3) 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.

* * * * *

[FR Doc. 2022–18224 Filed 8–24–22; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2022–0002]

RIN 0750–AK96

Defense Federal Acquisition Regulation Supplement: Reauthorization and Improvement of Mentor-Protégé Program (DFARS Case 2020–D009)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2020 that reauthorizes and modifies the DoD Mentor-Protégé Program.

DATES: Effective October 24, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 11009 on February 28, 2022, to revise the DFARS to implement section 872 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 872 modifies subsection (j) of section 831 of the NDAA for FY 1991 (Pub. L. 101–510) to reauthorize and improve the DoD Mentor-Protégé Program. Section 872 extends the date for entering into a mentor-protégé agreement, extends the date for reimbursement of mentors, limits the term for program participation, extends the date for a mentor to receive credit toward the attainment of small business subcontracting goals, and expands eligibility for protégé firms. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment follows:

A. Summary of Significant Changes From the Proposed Rule

No changes were made from the proposed rule as a result of the public comment received.

B. Analysis of Public Comments

Comment: One respondent indicated a conditional individual waiver(s) to the nonmanufacturing rule should be issued in conjunction with the extended DoD Mentor-Protégé Program through September 30, 2024.

Response: This is outside the scope of the rule. Individual waivers to the nonmanufacturer rule are addressed at Federal Acquisition Regulation (FAR) 19.505(c)(4)(B) and 13 CFR 121.1203.

C. Other Changes

A change was made at DFARS Appendix I, I–101, Definitions, to delete the definitions for minority institution of higher education, women-owned small business, and service-disabled veteran-owned small business. These terms are already defined in FAR part 2, and the definitions in FAR part 2 apply to the DFARS unless otherwise stated. Minor editorial changes were made at DFARS 219.7101 and 219.7102. No other changes were made from the proposed rule.

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

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing provisions or clauses or their applicability to contracts at or below the simplified acquisition threshold and acquisitions of commercial services and commercial products, including commercially available off-the-shelf items.

IV. Expected Impact of the Rule

This rule implements section 872 of the NDAA for FY 2020, which reauthorizes and improves the DoD Mentor-Protégé program. The purpose of the program is to provide incentives to major DoD contractors to furnish eligible small business concerns with assistance designed to—

(1) Enhance the capabilities of small business concerns to perform as subcontractors and suppliers under DoD contracts and other contracts and subcontracts; and

(2) Increase the participation of such business concerns as subcontractors and suppliers under DoD contracts, other Federal Government contracts, and commercial contracts.

Therefore, this rule will benefit small business concerns by extending the opportunity to enter into DoD mentor-protégé agreements. In addition, the eligibility of small business concerns is expanded as this rule removes prior restrictions for eligibility by aligning the size of the small business with the size standard associated with its primary North American Industry Classification System code. This rule is also expected to benefit large entities and the Government by expanding the defense industrial base.

V. 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 not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take