

“The following item(s) *[Insert list provided by plant clearance officer]* require demilitarization, mutilation, or destruction by the Purchaser. Additional instructions are provided in accordance with Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this sales contract. A Government representative will certify and verify demilitarization of items. Prepare demilitarization certificates in accordance with DoDM 4160.28, Volume 2, section 4.5, DEMIL Certificate (see figure 2, Example DEMIL Certificate).”

(iii) Removal and title transfer:

“Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative.”

(iv) Assumption of cost incident to demilitarization:

“The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.”

(v) Failure to demilitarize:

“If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the sales contract, the Contractor may, upon giving 10 days written notice from to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.”

(l) *Restrictions on purchase or retention of Contractor inventory.* The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(1) Is a civilian employee of DoD or the U.S. Coast Guard;

(2) Is a member of the armed forces of the United States, including the U.S. Coast Guard; or

(3) Has any functional or supervisory responsibilities for or within DoD's property disposal, disposition, or plant clearance programs or for the disposal of contractor inventory.

(m) *Proceeds from sales of surplus property.* Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Contracting Officer;
(2) Credited to the Government as part of the settlement agreement pursuant to the termination of the contract;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212, 237, and 252

[Docket DARS–2023–0016]

RIN 0750–AL07

Defense Federal Acquisition Regulation Supplement: Transfer and Adoption of Military Animals (DFARS Case 2020–D021)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 26, 2023, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2020–D021, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://regulations.gov>. Search for “DFARS Case 2020–D021.” Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2020–D021” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2020–D021 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend DFARS part 237, Service Contracting, to implement section 372(f) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 372(f), as implemented at 10 U.S.C. 2387 (previously 10 U.S.C. 2410r), requires DoD contracting officers to include a clause in contracts when contract working dogs are provided under the contract. 10 U.S.C. 2387 requires the transfer of a contract working dog, after the service life of the dog has terminated, to the United States Air Force, 341st Training Squadron, for—

a. Veterinary screening and care; and
b. Reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

The service life of a contract working dog may be terminated if a contracting officer determines that—

a. The final contractual obligation of the dog preceding the transfer is with DoD; and

b. The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

DoD determines the status of military animals and whether a military animal is suitable for transfer or adoption under the statutory direction provided in 10 U.S.C. 2583, Military animals: transfer and adoption. It also provides the priority for adoptions or transfer, standards for veterinary care, and transportation of retiring military working dogs. The 341st Training Squadron is responsible for the performance of these duties under the DoD Military Working Dog Program. Section 372 amends 10 U.S.C. 2583; however, those amendments are outside of the scope of this proposed rule.

II. Discussion and Analysis

The proposed rule creates a new subpart under DFARS part 237, Service Contracting, to address the requirements in 10 U.S.C. 2387. DoD generally contracts for contract working dogs as a service performed by a contracted handler and dog as a unit or team, most often for security, law enforcement, or other specialized circumstances. These contract working dogs are under the control of an experienced, contracted handler at all times and are not paired with an active duty military member or DoD civilian handler. Based upon the manner in which DoD contracts for the contract working dogs and the definition of a contract working dog provided in 10 U.S.C. 2387(c), the new

direction is implemented in DFARS part 237.

A contract working dog would be transferred to the Government only when the conditions at 10 U.S.C. 2387(b) are met. In the event that a requiring activity submits a request based upon both conditions being met, a contracting officer may determine that the service life of a contract working dog has terminated. The dog will then be transferred to the 341st Training Squadron for reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

The proposed rule prescribes a new contract clause at 252.237–70XX, Transfer and Adoption of Military Animals, for use in solicitations and contracts for contract working dog services, to include solicitations and contracts using Federal Acquisition Regulation (FAR) part 12 procedures and for commercial products and commercial services. The new clause provides notification to offerors and contractors that under certain circumstances, the contract working dog is required to be transferred to the 341st Training Squadron for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

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 proposed rule implements 10 U.S.C. 2387 as amended by section 372(f) of the NDAA for FY 2020. The statute requires DoD to add a contract clause to contracts for the provision of contract working dog services. As a result, the proposed rule adds one new contract clause at 252.237–70XX, Transfer and Adoption of Military Animals, for use in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for commercial products and commercial services, that require the services of a contract working dog. Accordingly, DoD intends to apply the proposed rule to acquisitions below the SAT and to the acquisition of commercial services.

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 Federal Acquisition Regulatory Council makes a 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 Federal Acquisition Regulation system of regulations. DoD intends to make that determination to apply this proposed rule at or below the SAT.

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

10 U.S.C. 3452 (previously 10 U.S.C. 2375) governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial services and commercial products including COTS items. 10 U.S.C. 3452 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 product and commercial service contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services. Due to delegations of authority from USD(A&S), the Principal Director, DPC is the appropriate authority to make this determination. DoD intends to make that determination to apply this proposed rule to the acquisition of commercial services if otherwise applicable.

C. Determination

DoD is proposing to apply the requirements of 10 U.S.C. 2387 to contracts at or below the SAT, since the requirements of the proposed clause at 252.237–70XX would apply to contracts that are normally of a value at or below the SAT and conducted under FAR part 12 procedures. The new requirements will apply to contracts for the acquisition of commercial services, because the services provided under these contracts are considered commercial in nature. The requirements do not apply to COTS items.

It is not in the best interest of the Federal Government to exempt application of this proposed rule to actions at or below the SAT or for commercial services. An exception for contracts below the SAT and those for commercial services would exclude the majority of the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

DoD does not expect the proposed rule to have a significant impact on the public, because the need for a contracting officer to make a determination that a contract working dog has reached the end of its service life will be rare. Such acquisitions are few in number, and service contractors who provide contract working dogs and handlers are expected to replace dogs and handlers who are unable to perform to DoD standards. A contracting officer's representative would be responsible for monitoring contract performance and coordinating any replacement dog and handler requirements.

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. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule will apply to a limited number of service providers. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2387 (previously 10 U.S.C. 2410r), as amended by section 372(f) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub.

L. 116–92). Under 10 U.S.C. 2387, DoD contracting officers are required to include a clause in contracts for contract working dog services.

The objective of the rule is to implement the statutory requirements for terminating the service life of a contract working dog, when certain circumstances apply, and transferring the animal to the Department of the Air Force, 341st Training Squadron. The legal basis of the rule is 10 U.S.C. 2387, as amended by section 372(f) of the NDAA for FY 2020.

This proposed rule will apply to small entities providing contract working dog and handler services to DoD. The proposed clause is prescribed for use in solicitations and contracts for such services, including those conducted under FAR part 12 procedures for the acquisition of commercial products and commercial services.

Research conducted in the Contract Opportunities section of *SAM.gov* indicates that contract working dog and handler services are generally procured under North American Industry Classification System codes and product and service codes that provide for certain physical security and law enforcement services. Data obtained from the Federal Procurement Data System (FPDS) for FY 2019, 2020, and 2021 indicate that DoD awards an average of 227 contract actions annually for these physical security and law enforcement services, which may include a requirement for a contract working dog and handler. Of the estimated 227 awards, an average of approximately 72 awards are made annually to an estimated 52 unique small entities. Neither FPDS nor *SAM.gov* provide data for the number of awards that are specific to the contract working dog and handler services; however, this analysis assumes all of the estimated awards and unique small entities may be impacted.

The proposed rule does not impose any new reporting, recordkeeping, or compliance requirements.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 610 (DFARS Case 2020–D021), in correspondence.

VII. Paperwork Reduction Act

This proposed 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 Part 212, 237, and 252

Government Procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 237, and 252 are proposed to be amended as follows:

- 1. The authority citation for parts 212, 237, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 2. Amend section 212.301 by adding paragraph (f)(xiv)(E) to read as follows:

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

* * * * *

(f) * * *

(xiv) * * *

(E) Use the clause at 252.237–70XX, Transfer and Adoption of Military Animals, as prescribed in 237.7X04 to comply with 10 U.S.C. 2387.

PART 237—SERVICE CONTRACTING

- 3. Add subpart 237.7X to read as follows:

SUBPART 237.7X—TRANSFER AND ADOPTION OF MILITARY ANIMALS

237.7X00 Scope of subpart.
237.7X01 Definition.
237.7X02 Policy.
237.7X03 Procedures.
237.7X04 Contract clause.

SUBPART 237.7X—TRANSFER AND ADOPTION OF MILITARY ANIMALS

237.7X00 Scope of subpart.

This subpart implements 10 U.S.C. 2387, which requires, under certain circumstances, the transfer of a contract working dog to the Department of Air Force, 341st Training Squadron, for veterinary screening and care in accordance with 10 U.S.C. 2583.

237.7X01 Definition.

As used in this subpart—

Contract working dog means a dog that—

- (1) Performs a service for DoD pursuant to a contract; and
- (2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

237.7X02 Policy.

(a) In accordance with 10 U.S.C. 2387, DoD will transfer a contract working dog to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care after the service life of the dog has terminated.

(b) The service life of a contract working dog may be terminated if—

- (1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(c) A contract working dog that has reached the end of its service life will be transferred for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

237.7X03 Procedures.

Contracting officers, at the request of the requiring activity, may issue a determination that the service life of a contract working dog has terminated if the conditions in 237.7X02(b) have been documented by the requiring activity.

237.7X04 Contract clause.

Use the clause at 252.237–70XX, Transfer and Adoption of Military Animals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require the use of a contract working dog.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 4. Add section 252.237–70XX to read as follows:

252.237–70XX Transfer and Adoption of Military Animals.

As prescribed in 237.7X04, use the following clause:

Transfer and Adoption of Military Animals (Date)

- (a) *Definition.* As used in this clause—
Contract working dog means a dog that—
(1) Performs a service for DoD pursuant to a contract; and

(2) Is trained and kenneled by an entity that provides such a dog pursuant to such a contract.

(b) In accordance with 10 U.S.C. 2387, a contract working dog, after the service life of the dog has terminated, is required to be transferred to the Department of the Air Force, 341st Training Squadron, for veterinary screening and care and for reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

(c) The service life of a contract working dog may be terminated if the Contracting Officer determines that—

(1) The final contractual obligation of the dog preceding transfer is with DoD; and

(2) The dog cannot be used by another department or agency of the Federal Government due to age, injury, or performance.

(d) If the Contracting Officer determines that the service life of a contract working dog has terminated, the dog will be transferred to the 341st Training Squadron for care and reclassification as a military animal and placement for adoption in accordance with 10 U.S.C. 2583.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS-2023-0018]

RIN 0750-AL33

Defense Federal Acquisition Regulation Supplement: Restriction on Certain Metal Products (DFARS Case 2021-D015)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that provides restrictions on the acquisition of certain covered materials from North Korea, the People's Republic of China, Russia, and Iran.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 26, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2021-D015, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for

“DFARS Case 2021-D015.” Select “Comment” and follow the instructions to submit a comment. Please include your name, company name (if any), and “DFARS Case 2021-D015” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2021-D015 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 844 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283). Section 844 amends 10 U.S.C. 2533c (redesignated 10 U.S.C. 4872) and removes from the restriction “material melted” and replaces it with “material mined, refined, separated, melted”. In addition, the reference to “tungsten” is removed and replaced with “covered material” in the exception for commercially available-off-the-shelf (COTS) items to the restriction of 50 percent or more by weight. The new restriction in the proposed rule will go into effect on January 1, 2026.

II. Discussion and Analysis

A. Restriction

The proposed rule would revise the restriction on the acquisition of covered materials melted or produced in the Democratic People's Republic of North Korea, the People's Republic of China, the Russian Federation, or the Islamic Republic of Iran at DFARS 225.7018-2(a), to include a reference to the end date of the current restriction effective through December 31, 2025, at paragraph (a)(1). The revision also states that the new restriction at paragraph (a)(2) for the covered materials becomes effective on January 1, 2026. The term “covered materials,” already defined at DFARS 225.7018-1, means samarium-cobalt magnets, neodymium-iron-boron magnets, tantalum metals and alloys, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

DFARS 225.7018-2(b)(2) is added to reflect the restriction effective on

January 1, 2026, for samarium-cobalt magnets to convey that the new restriction will include the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets. Accordingly, paragraph (b)(1) was revised to reflect the end date of the current restriction for samarium-cobalt magnets and neodymium-iron-boron magnets on December 31, 2025. In addition, revisions at DFARS 225.7018-2(b)(4) include the new restriction for neodymium-iron-boron magnets covering the entire supply chain effective on January 1, 2026.

Paragraph (c)(1) adds the end date of the current restrictions for tantalum metals and alloys, effective through December 31, 2025. DFARS 225.7018-2(c)(2) implements the new restriction for the production of tantalum metals and alloys effective on January 1, 2026. DFARS 225.7018-2(d)(2) implements the new restriction for the production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy in effect on January 1, 2026. Paragraph (d)(1) adds the end date of the current restrictions for tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, effective through December 31, 2025.

B. Exceptions

The proposed rule at 225.7018-3(c)(1)(i) revises the COTS items exception to the restriction of 50 percent or more by weight to include all covered material and removes the individual exception for tungsten. Subsequently, the restriction was revised at DFARS 225.7018-3(c)(1)(i)(A) to add the end date of the current restriction of 50 percent or more tungsten by weight, effective through December 31, 2025. In addition, the new COTS items exception is added at (c)(1)(i)(B) to implement the new restriction for 50 percent or more covered material by weight effective on January 1, 2026. The proposed rule at DFARS 225.7018-3(c)(1)(ii) revises the current COTS items exception to reflect the restriction effective through December 31, 2025.

DFARS 225.7018-3(c)(1)(iii) is added to implement the COTS items exception for the new restriction on a covered material that is a mill product such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component, to be effective on January 1, 2026.