



**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:** 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 of Fiscal Year 2021 that provides restrictions on the acquisition of certain covered materials from The Democratic People's Republic of North Korea, The People's Republic of China, The Russian Federation, and The Islamic Republic of Iran.

**DATES:** Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the **Federal Register** at 88 FR 25609 on April 27, 2023, to implement section 844 of the

National Defense Authorization Act (NDAA) for Fiscal Year (FY) 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 final rule also implements section 854 of the NDAA for FY 2024 (Pub. L. 118-31) that amends the effective date in section 844(b) of the NDAA for FY 2021. Section 854 extends the effective date of the restriction from 5 years to 6 years. Nine respondents submitted public comments in response to the proposed 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 Proposed Rule*

Revisions were made at DFARS 225.7018-2 to implement the new effective date of the restriction in accordance with section 854 of the NDAA for FY 2024. Consequently, the dates of the current restrictions were revised to provide an effective date through December 31, 2026, and to reflect that the new restrictions will be effective on January 1, 2027. Conforming revisions were also

made in the DFARS clause at 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten.

## *B. Analysis of Public Comments*

### 1. Support for the Rule

*Comment:* Most respondents strongly supported the proposed rule. A few respondents stated that implementation of the restriction will help to strengthen domestic supply chains and help to establish secure domestic sourcing requirements. A respondent conveyed support for the rule and provided the restriction will contribute to the redevelopment of domestic rare earth production capacity.

*Response:* DoD acknowledges the respondents' support for the rule.

### 2. Strengthen the Defense Industrial Base

*Comment:* A respondent requested the opportunity to meet and strategize with DoD representatives of the Defense Acquisition Regulations System.

*Response:* While undergoing the Title 48 CFR rulemaking process, information regarding a rule is pre-decisional, deliberative Government information that cannot be shared with the public. In the context of public notice and comment in the course of rulemaking, it would be inappropriate to meet with individual members of the public to strategize about a pending rule.

### 3. Availability of Domestic Sources or Suppliers

#### a. Disruption in the U.S. Supply Chain

*Comment:* A few respondents shared concerns regarding the market dominance of Chinese rare earth metals, the impacts of the restriction, and the potential disruption in the U.S. domestic supply chains.

*Response:* Implementation of the statutory sourcing requirements in accordance with 10 U.S.C. 2533c (now 10 U.S.C. 4872), as amended by section 844 of the NDAA for FY 2021, is a necessary step to support the development of secure suppliers and transition defense critical supply chains to secure sources. DoD has supported the effective implementation of the statutory sourcing requirements through existing and planned investments in compliant suppliers. If compliant suppliers are not available for specified applications, the statute authorizes DoD to issue a nonavailability determination until a compliant supplier becomes available.

b. Samarium-Cobalt (Sm-Co) Magnets

*Comment:* A respondent specified that it is the only U.S.-based, vertically integrated domestic supplier of samarium cobalt magnets and discussed the impacts of their current rare earth metals supplier and its subsequent foreign ownership status. The respondent further states that they have spoken to potential domestic rare earth metal suppliers and their transition to becoming a domestic supplier is in its infancy at best.

*Response:* Implementation of the statutory sourcing requirements, in coordination with existing and planned DoD

investments in the rare earth magnet supply chain, will support the development of compliant suppliers for rare earth concentrates, oxides, metals, and magnets. If compliant suppliers are not available for specified applications, the statute authorizes DoD to issue a nonavailability determination until a compliant supplier becomes available. DoD notes that the statute permits sourcing from domestic suppliers as well as suppliers located in other countries that source outside of the four covered countries: North Korea, Russia, Iran, or the People's Republic of China.

#### 4. National Security Risks

*Comment:* Many respondents relayed their overall concerns with the Chinese rare earth metals market dominance and the associated national security risks.

*Response:* The principal benefit of this rule is that it continues the transition of the defense industrial base toward sourcing strategic and critical materials from suppliers other than the covered countries of North Korea, Russia, Iran, and the People's Republic of China. This requirement, in combination with existing and planned DoD investments, demonstrates DoD's commitment to support secure suppliers and to reduce the national security risks associated with over-reliance on, and the dominance of, the Chinese market.

#### 5. Effective Date of Restriction

*Comment:* A few respondents expressed concern that domestic sources would not be available by the effective dates

established in the rule. A respondent specifically recommended DoD advocate that Congress amend the statute to replace the specific effective dates with, instead, an effective date 180 days after the Secretary of Defense certifies to Congress that sufficient domestic sources are available to meet DoD's needs.

*Response:* Section 844(b) of the NDAA for FY 2021, as amended by section 854 of the NDAA for FY 2024, expressly states the effective date of the restrictions. As such, DoD cannot implement any other effective dates. DoD notes that section 854 extends the effective date of the restriction by one additional year to January 1, 2027. The restriction at DFARS 225.7018-2 reflects the statutory effective date as a clear demand signal and timetable to DoD's industry partners. DoD encourages industry to diligently seek and develop compliant domestic sources by the stated effective dates.

#### 6. Recycled Material Exception

*Comment:* A respondent inquired about the applicability of the restriction to an end item containing a covered material that is a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States. The respondent recommends DoD consider the same recycled material exception to be applied to the other magnets subject to the statutory restriction.

*Response:* The statutory requirements for exceptions in 10 U.S.C. 4872(c) (3) (C) state that the restriction under subsection

(a) does not apply to the purchase by DoD of an end item containing a covered material that is a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States. The section 844 amendments to 10 U.S.C. 2533c (now 10 U.S.C. 4872) did not add exceptions for the remaining covered materials, defined in the statute.

## 7. Statutory Implementation

*Comment:* A few respondents expressed support for the rule but highlighted specific areas for further consideration by DoD. A respondent welcomed the revision of the exception to the restriction to include COTS items that are 50 percent or more by weight to all covered items, including but no longer limited to only tungsten. However, the respondent opined that implementing this change would be problematic because of a lack of consistent methodology to determine whether an item qualifies for the exception. Another respondent expressed support for the proposed change because it would reduce foreign influence in America's critical mineral supply chain. However, the respondent also commented that the restriction should be expanded to include other critical mineral products, specifically cobalt metal powder and refined cobalt.

*Response:* DoD understands that cobalt metal powder is part of the samarium-cobalt magnet supply chain and will be subject to this statutory restriction. The rule implements section 844 of the NDAA for FY 2021, which replaces the reference to "tungsten"

with "covered material" in the exception for COTS items to the restriction of 50 percent or more by weight. When identifying whether the COTS items exception applies to the end item, DoD encourages industry to consult the relevant procuring activity for the acquisition on how best to demonstrate compliance to the exception. DoD expects industry to use a reasonable and reliable process to determine an end item's composition and weight.

In regard to further expanding the restriction to include cobalt metal powder and refined cobalt, the statutory restriction includes, for samarium-cobalt magnets, the entire supply chain from mining or production of a cobalt and samarium ore, through production of finished magnets. (Also see the response provided for the comment category at 8b, Commercially Available Off-the-Shelf (COTS) Items Applicability.)

## 8. Recommended Revisions

### a. Nonavailability Determination

*Comment:* A respondent recommended implementation of the restriction with use of the authority for a class nonavailability determination until viable supplier sources in compliance with the new restrictions are verified. Another respondent recommended use of the same process created for a nonavailability determination under the specialty metals requirements and the current waiver process to allow for the use of noncompliant materials in case of a shortage. Additionally, the respondent recommends the ability for contractors and

subcontractors to request nonavailability determinations, a public notice of the requests, and a process for manufacturers to demonstrate compliance and the ability to supply materials.

*Response:* The DFARS authorizes DoD to issue both individual and class nonavailability determinations if compliant materials are unavailable, as stated at DFARS 225.7018-4. The nonavailability determination process for this statute is largely aligned with the existing nonavailability determination process for specialty metals in accordance with 10 U.S.C. 4863 (see 225.7003-3).

The statutory sourcing requirement is important to transition supply chains to secure suppliers of strategic and critical materials. The existing regulations authorize DoD to issue individual and class nonavailability determinations if needed for national security in cases where compliant materials are not available. The process for class nonavailability determinations also provides opportunity for interested parties and manufacturers to provide information to DoD regarding the availability of compliant materials that would be relevant to the decision.

As provided at DFARS 225.7018-4, the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) must issue a public notice of the intent to make a class nonavailability determination at least 30 days prior to issuing the nonavailability determination, to the maximum extent practicable consistent with the protection of national security. Following

the public notice, interested parties, including producers of covered materials, may provide relevant information. The USD(A&S) will take the information provided into consideration when determining whether to issue a class nonavailability determination. When issuing the final class nonavailability determination, the USD(A&S) will ensure that the class nonavailability determination and supporting rationale will be made publicly available, consistent with the protection of national security and confidential business information.

b. Commercially Available Off-the-Shelf (COTS) Items  
Applicability

*Comment:* A respondent stated that it will be problematic to implement the COTS items exception to the restriction of 50 percent or more by weight that includes all "covered material" as now defined in 10 U.S.C. 4872 in accordance with section 844 of the NDAA for FY 2021. The respondent further recommended that clarification in the rule is required to provide a consistent methodology for contractors to determine qualification criteria under the exception in the DFARS clause 252.225-7052 at paragraph (c)(1)(i)(A)(1), although a respondent acknowledged statutory changes would be required to effect this recommendation. Additionally, a respondent commented that removing the COTS items exception and including the entire and most remote aspects of the supply chain represents a nearly inexecutable burden for companies to manage.

*Response:* Section 844 is silent on applicability to contracts and subcontracts for the acquisition of commercial products and commercial services. DoD has made a determination of applicability to acquisitions of commercial products including COTS items, except as exempted in the statute. See section III of this preamble.

#### 9. Outside the Scope of the Rule

*Comment:* A respondent provided information and data on their efforts to establish a tungsten mine in the United Kingdom and requested a point of contact to discuss government funding.

*Response:* This rule is implementing restrictions in accordance with 10 U.S.C. 4872, as amended by section 844 of the NDAA for FY 2021 and section 854 of the NDAA for FY 2024. Establishment of a tungsten mine and future investment is outside the scope of this rule.

*Comment:* A respondent encouraged the Government to continue to support research and development on economical and sustainable processing technologies for rare earth elements as well as development of alternatives.

*Response:* Government research and development efforts for future processing technologies are outside the scope of this rule.

*Comment:* A respondent recommends creation of a centralized DoD certification process, a trusted marketplace of commercial suppliers, or a qualified list of compliant sources to

facilitate the transition across the defense industrial base for future compliance with the statutory restriction.

*Response:* The creation of a compliant supplier list is outside the scope of the rule. While DoD may explore the potential feasibility of developing a list for this application, in general, DoD does not support establishing a list of preferred sourcing.

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

This rule amends the clause at DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items. DFARS 252.225-7052 does not apply to acquisitions below the SAT, in accordance with 41 U.S.C. 1905, but it applies to contracts for the acquisition of commercial products, including COTS items, except as provided in the statute at 10 U.S.C. 4872(c)(3).

### **IV. Expected Impact of the Rule**

This rule will impact the Government and industry because this rule significantly expands the scope of compliance in accordance with section 844 of the NDAA for FY 2021, section 854 of the FY 2024 NDAA, and 10 U.S.C. 4872.

The current restriction at DFARS 225.7018-2 covers the melting of precursor metals (e.g., samarium metal and cobalt metal) to produce alloys (e.g., samarium-cobalt alloy) and other equivalent processes (e.g., atomization, calcination and reduction, or final consolidation of non-melt derived metals powders). One of the materials covered by this rule at 225.7018-2 and the clause at DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, is also covered by longstanding restrictions for the acquisition of specialty metals at 225.7003-2 (10 U.S.C. 4875) and under the clause at DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, that includes the same coverage of production steps (e.g., melt or produce).

This rule expands the scope of product coverage to all upstream mining, refining, separation, and melting of covered materials. Taken together with the overlapping restriction requirement on specialty metals at 225.7003-2 and the clause at DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, covered materials that are compliant with the specialty metals clause may not be compliant with the current restriction at DFARS 225.7018-2 or the clause at DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, nor are they likely to be compliant with this rule.

For example, assume that a contractor purchases a component from a United Kingdom-based supplier, and the assembly contains a samarium-cobalt magnet manufactured in China. This component

would be compliant with the specialty metals clause, because the specialty metals clause exempts qualifying country components. However, this rule has no exemption for qualifying country components, and thus the assembly would be noncompliant with the current restriction at DFARS 225.7018-2 and the clause at DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, in its current form and as amended by this rule.

Further, assume that a company purchases a motor from a U.S. manufacturer, and that U.S. motor manufacturer purchases a magnet from a U.S. company. The U.S. magnet company purchases cobalt metal and samarium metal from China, and these metals are melted in the United States. This magnet would be compliant with both the restriction required by the specialty metals clause at DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, and the current restriction at 225.7018-2 and the clause at DFARS 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten. However, this magnet would not be compliant with the requirements that will be effective on January 1, 2027.

Further, assume that a company produces business jets and modifies them for military use. During a given year, the business jet manufacturer purchases 50 percent of its samarium-cobalt magnet needs from a U.S. source that mines and conducts all subsequent processing steps in the United States. The balance of the company's samarium-cobalt magnets is procured

from Chinese sources and the company commingles domestically and Chinese-produced magnets on its production line. In this scenario, the modified business jet is compliant with the restriction at DFARS 225.7003-2 and the clause at DFARS 252.225-7009, Restriction on Acquisition of Specialty Metals, because it is a commercial derivative military article, and the company procures 50 percent of its total needs from a domestic source. However, the modified business jet is potentially noncompliant with the final rule, given the commingling of Chinese and U.S. samarium-cobalt magnets in each aircraft.

Notwithstanding the significant change in scope, DoD notes that Congress enacted this requirement on January 1, 2021, through Public Law 116-283. This five-year phase-in period, now revised to six years by section 854 of the NDAA for FY 2024, provides a reasonable period for industry to develop alternative sources of supply for covered materials from sources other than the People's Republic of China, the Russian Federation, the Democratic People's Republic of North Korea, and the Islamic Republic of Iran.

DoD also notes that it has invested and continues to invest in domestic supply chains for covered materials, such as light and heavy rare earth elements and rare earth magnet manufacture, using authorities under 50 U.S.C. 4533 and 10 U.S.C. 4817 among others. For those materials not currently covered by DoD investments, such as tantalum and tungsten, publicly-traded U.S. companies, including DoD contractors and their subcontractors,

already are required to conduct supply chain due diligence on these minerals when they are necessary to the functionality or production of a product manufactured by that company. This requirement stems from section 1502 of Public Law 111-203 (enacted at 17 CFR 240.13p-1) to ensure that such minerals are not supporting armed conflict in the Democratic Republic of Congo and adjoining countries.

The principal benefit of this rule is that it continues to transition the defense industrial base towards the procurement of strategic and critical materials from sources other than North Korea, Russia, Iran, or the People's Republic of China, with the latter constituting the pacing challenge identified in the National Defense Strategy. Notwithstanding the current and long-term challenge posed by China, Russia continues to pose an acute threat. Russia is a major producer and exporter of a wide array of strategic and critical materials, and the extreme volatility in these markets since Russia's invasion of Ukraine demonstrates the national security imperative to build resilience into supply chains for covered materials of this rule.

#### **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, as amended.

## **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 has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. and is summarized as follows:

This rule is required to implement section 844 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283), which amends 10 U.S.C. 2533c (now 10 U.S.C. 4872), and section 854 of the NDAA for FY 2024 (Pub. L. 118-31). The objective of the rule is to implement the section 844 revisions

to the restriction on the acquisition of covered materials melted or produced in any covered country (i.e., North Korea, the People's Republic of China, Russia, or Iran) to include mined, refined, separated, melted, or produced. In addition, section 844 revises the commercially available off-the-shelf (COTS) items exception to the restriction of 50 percent or more by weight to now include all covered material and remove the individual exception to only tungsten. The term "covered materials," already defined in the statute and 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. Section 854 of the NDAA for FY 2024 extends the effective date of the revised requirements by one year.

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

Based on data from the Federal Procurement Data System for FY 2021, 2022, and 2023, DoD awarded in the United States 26,697 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 restricted metals (such as clothing and fabrics, books, or lumber products). These contracts were awarded to a total of 3,127 unique entities, of which 1,783 were unique small entities; contracts were awarded to a median of 611 unique small

entities per year. It is not known what percentage of these awards involved the specific covered materials 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 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.

#### **VIII. Paperwork Reduction Act**

This final 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 225 and 252**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 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. Add section 225.7018-0 to read as follows:

**225.7018-0 Scope.**

This section implements 10 U.S.C. 4872.

3. Revise section 225.7018-2 to read as follows:

**225.7018-2 Restriction.**

(a) *General.* Except as provided in 225.7018-3 and 225.7018-4-

(1) Effective through December 31, 2026, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material; and

(2) Effective January 1, 2027, do not acquire any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material. (Section 854, Pub. L. 118-31; 10 U.S.C. 4872.)

(b) *Samarium-cobalt magnets and neodymium-iron-boron magnets.*

(1) Effective through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes-

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(2) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or

production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets, except as provided at 225.7018-3.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(4) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes the entire supply chain from mining of neodymium, iron, and boron through production of finished magnets, except as provided at 225.7018-3.

(c) *Tantalum metals and alloys.* (1) Effective through December 31, 2026, 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.

(2) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys, except as provided at 225.7018-3.

(d) *Tungsten metal powder and tungsten heavy alloy.* (1) Effective through December 31, 2026, 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.

(2) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, except as provided at 225.7018-3.

4. Amend section 225.7018-3—

a. By revising paragraph (c) (1); and

b. In paragraph (d) (1) by removing “this contract;” and adding “the contract;” in its place.

The revision reads as follows:

**225.7018-3 Exceptions.**

\* \* \* \* \*

(c) \* \* \*

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

(i) A commercially available off-the-shelf item that is—

(A) 50 percent or more tungsten by weight effective through December 31, 2026; or

(B) 50 percent or more covered material by weight effective January 1, 2027;

(ii) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy 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; or

(iii) Effective January 1, 2027, 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;

\* \* \* \* \*

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Amend section 252.225-7052 by—

- a. Revising the clause date; and
- b. Revising paragraphs (b) and (c)(1).

The revisions read as follows:

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

\* \* \* \* \*

RESTRICTION ON THE ACQUISITION OF CERTAIN MAGNETS, TANTALUM, AND TUNGSTEN (MAY 2024)

\* \* \* \* \*

(b) *Restriction.* (1) Except as provided in paragraph (c) of this clause—

(i) Effective through December 31, 2026, the Contractor 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; and

(ii) Effective January 1, 2027, the Contractor shall not deliver under this contract any covered material mined, refined, separated, melted, or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (section 854, Pub. L. 118-31; 10 U.S.C. 4872).

(2) (i) (A) Effective through December 31, 2026, for samarium-cobalt magnets and neodymium-iron-boron magnets, this restriction includes—

(1) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(2) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(B) Effective January 1, 2027, for samarium-cobalt magnets this restriction includes the entire supply chain from mining or production of a cobalt and samarium ore or feedstock, including recycled material, through production of finished magnets.

(ii) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on

melting of specialty metals if the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(3) Effective January 1, 2027, for neodymium-iron-boron magnets, this restriction includes entire supply chain from mining of neodymium, iron, and boron through production of finished magnets.

(4) (i) Effective through December 31, 2026, 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.

(ii) Effective January 1, 2027, for production of tantalum metals of any kind and alloys, this restriction includes mining or production of a tantalum ore or feedstock, including recycled material, through production of metals of any kind and alloys.

(5) (i) Effective through December 31, 2026, for production of tungsten metal powder and tungsten heavy alloy, this restriction includes-

(A) Atomization;

(B) Calcination and reduction into powder;

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

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

(ii) Effective January 1, 2027, for production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy, this restriction includes mining or production of a tungsten ore or feedstock, including recycled material, through production of tungsten metal powders, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(c) *Exceptions.* This clause does not apply—

(1) To an end item containing a covered material that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is—

(1) 50 percent or more tungsten by weight effective through December 31, 2026; or

(2) 50 percent or more covered material by weight effective January 1, 2027;

(B) Effective through December 31, 2026, a tantalum metal, tantalum alloy, or tungsten heavy alloy 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;

(ii) Effective January 1, 2027, 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;

(iii) An electronic device, unless otherwise specified in the contract; or

(iv) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

\* \* \* \* \*

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