

(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)

[FR Doc. 2023-08644 Filed 4-26-23; 8:45 am]

BILLING CODE 5001-06-P

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.

C. Contract Clause Revision

The clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, is revised to incorporate conforming revisions at paragraph (b)(1)(i) for the current restriction with the end date; and the new statutory restriction with the effective date is in paragraph (b)(1)(ii). The current restriction for samarium-cobalt magnets and neodymium-iron-boron magnets at paragraph (b)(2)(i)(A) includes a reference to the end date of December 31, 2025, and the new restriction is implemented at paragraph (b)(2)(B) effective on January 1, 2026. The COTS items exceptions to the restriction are included in paragraphs (c)(1)(ii)(A)(1) and (2) in accordance with section 844 of the NDAA for FY 2021 and 10 U.S.C. 4872.

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

This proposed rule includes amendments to the clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten. However, this proposed rule does not impose any new requirements on contracts at or below the SAT or for commercial products, including COTS items. DFARS 252.225–7052 does not apply to acquisitions at or below the SAT, in accordance with 41 U.S.C. 1905, but 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). DoD has previously signed a determination of applicability of 10 U.S.C. 4872 to acquisitions of commercial items, except for COTS items to the extent exempted in the statute.

IV. Expected Impact of the Rule

This proposed rule is expected to have an impact on the Government and industry because this rule significantly expands the scope of compliance in accordance with section 844 of the NDAA for FY 2021 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 metal powders). One of the materials covered by this proposed 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 DFARS 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 proposed rule expands the scope of product coverage to all upstream mining, refining, separation, and melting of covered materials. Taken together with the overlapping restriction on specialty metals at DFARS 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 proposed 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 proposed 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 proposed.

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 and the current restriction at DFARS 225.7018–2 and the clause at DFARS 252.225–7052. However, this magnet would not be compliant with the proposed rule requirements effective on January 1, 2026.

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 are 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, 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 proposed 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 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 (implemented 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 proposed rule is continuing to transition the defense industrial base toward 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. 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 proposed 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, 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed 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) to revise 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 covered materials mined, refined, separated, melted, or produced. In addition, it 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.

The objective of the proposed rule is to implement section 844 of the NDAA for FY 2021. The legal basis for this proposed rule is 10 U.S.C. 4872, as amended by section 844 of the NDAA for FY 2021.

Based on data from the Federal Procurement Data System for FY 2020, 2021, and 2022, DoD awarded in the United States 22,729 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 2,070 unique entities, of which 1,624 were unique small entities; contracts were awarded to a median of 527 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.

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

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.

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 this 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 2021–D015), 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 Parts 225 and 252

Government procurement.

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

Therefore, 48 CFR parts 225 and 252 are proposed to be 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, 2025, 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, 2026, 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 844, Pub. L. 116–283; 10 U.S.C. 4872.)

(b) *Samarium-cobalt magnets and neodymium-iron-boron magnets.* (1) Effective through December 31, 2025, 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, 2026, 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, 2026, 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, 2025, 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, 2026, 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, 2025, 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, 2026, 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, 2025; or

(B) 50 percent or more covered material by weight effective January 1, 2026;

(ii) Effective through December 31, 2025, 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, 2026, 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; or

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.225–7052 by revising the clause date and paragraphs (b) and (c)(1) to 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 (Date)

* * * * *

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

(i) Effective through December 31, 2025, 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, 2026, 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 844, Pub. L. 116–283; 10 U.S.C. 4872).

(2)(i)(A) Effective through December 31, 2025, 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, 2026, 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, 2026, 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, 2025, 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, 2026, 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, 2025, 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, 2026, 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, 2025; or

(2) 50 percent or more covered material by weight effective January 1, 2026;

(B) Effective through December 2025, 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

(ii) Effective January 1, 2026, 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; or

(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.

* * * * *

[FR Doc. 2023–08646 Filed 4–26–23; 8:45 am]

BILLING CODE 5001–06–P