

# DFARS Procedures, Guidance, and Information

## PGI 225—Foreign Acquisition

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(Revised December 4, 2018)

### PGI 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION

#### PGI 225.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

##### PGI 225.7002-1 Restrictions.

(a)(1)(ii)(1) The following are examples, not all-inclusive, of Product and Service Codes (PSCs) that contain items of clothing:

(i) Clothing apparel (such as outerwear, headwear, underwear, nightwear, footwear, hosiery, or handwear) listed in PSC 8405, 8410, 8415, 8420, 8425, 8450, or 8475.

(ii) Footwear listed in PSC 8430 or 8435.

(iii) Hosiery, handwear, or other items of clothing apparel, such as belts and suspenders, listed in PSC 8440 or 8445.

(iv) Badges or insignia listed in PSC 8455.

(2) The PSCs listed in paragraph (a)(1)(ii)(1) of this section also contain items that are not clothing, such as—

(i) Visors;

(ii) Kevlar helmets;

(iii) Handbags; and

(iv) Plastic identification tags.

(3) Each item should be individually analyzed to determine if it is clothing, rather than relying on the PSC alone to make that determination.

(4) The fact that an item is excluded from the foreign source restriction of the Berry Amendment applicable to clothing does not preclude application of another Berry Amendment restriction in DFARS [225.7002-1](#) to the components of the item.

(5) Small arms protective inserts (SAPI plates) are an example of items added to, and not normally associated with, clothing. Therefore, SAPI plates are not covered under the Berry Amendment as clothing. However, fabrics used in the SAPI plate are still subject to the foreign source restrictions of the Berry Amendment. If the fabric used in the SAPI plate is a synthetic fabric or a coated synthetic fabric, the fibers and yarns used in the fabric are not covered by the Berry Amendment, because the fabric is a component of an end product that is not a textile product (see DFARS [225.7002-2](#)(m)).

*Example:* A SAPI plate is compliant with the Berry Amendment if the synthetic fiber or yarn is obtained from foreign country X and woven into synthetic fabric in the United States, which is then incorporated into a SAPI plate manufactured in foreign country Y.

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### (2) *Hand or measuring tools.*

(A) As applied to hand or measuring tools, “produced in the United States” means that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government.

(B) If a hand or measuring tool was assembled in a country other than the United States, then disassembled and reassembled in the United States, the hand or measuring tool was not produced in the United States.

(C) The requirement to buy hand or measuring tools produced in the United States does not impose any restriction on the source of the components of the hand or measuring tools. This is unlike the Berry Amendment restriction on clothing (see [225.7002-1\(a\)\(1\)\(ii\)](#)), which explicitly requires domestic source for the materials and components of clothing (other than unusual components such as sensors or electronics), as well as the additional separate restrictions on various types of fibers and fabrics that might be components of the clothing.

(D) If the acquisition of the hand or measuring tools is also subject to the Buy American statute (see FAR subpart 25.1), then in order to qualify as a domestic end product, the cost of the components mined, produced, or manufactured in the United States or a qualifying country, must exceed 50 percent of the cost of all the components of the hand or measuring tool.

### **PGI 225.7002-2 Exceptions.**

#### (b) *Domestic nonavailability determinations.*

#### (3) *Defense agencies other than the Defense Logistics Agency.*

(A) A defense agency requesting a domestic nonavailability determination must submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L) DPAP/CPIC  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(B) The Director, Defense Procurement and Acquisition Policy, will forward the request to the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD(AT&L)) as appropriate.

### **PGI 225.7003 Restrictions on acquisition of specialty metals.**

#### **PGI 225.7003-2 Restrictions.**

(a)(i) This restriction applies to the item containing the specialty metal, not just the specialty metal, as was true when the restriction was part of 10 U.S.C. 2533a. The previous practice of withholding payment while conditionally accepting noncompliant items is not permissible for—

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(A) Contracts entered into on or after November 16, 2006; or

(B) New procurements or out-of-scope changes accomplished on or after November 16, 2006, through the use of bilateral modifications to contracts originally awarded prior to November 16, 2006.

(ii) Consistent with the definition of “component” in the clause at DFARS [252.225-7009](#), a component is any item supplied to the Government as part of an end item or of another component. Items that are not incorporated into any of the items listed in DFARS [225.7003-2](#)(a) are not components of those items. For example, test equipment, ground support equipment, or shipping containers are not components of the missile system.

### PGI 225.7003-3 Exceptions.

(b)(2) *Report of COTS items.*

If a department or agency uses the exception at DFARS [225.7003-3](#)(b)(2) for an acquisition of COTS end items valued at \$5 million or more per item, the department or agency shall address use of the exception in a year-end report, to be prepared and submitted as follows:

(A) Entitle the report “COTS Specialty Metal Exceptions Granted During Fiscal Year \_\_\_\_\_.”

(B) For each excepted COTS item purchased during the fiscal year, include in the report, at a minimum, the applicable—

- (1) Contract number and any applicable delivery order number;
- (2) Dollar value; and
- (3) Item description.

(C) Submit the report by October 31 of each year to:

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L) DPAP/CPIC  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(b)(5) Domestic specialty metals nonavailable as and when needed.

(A) Determining availability.

(1) FAR 15.402 requires that contracting officers purchase supplies and services at fair and reasonable prices. Thus, contracting officers must determine whether any increase in contract price that results from providing compliant specialty metal is fair and reasonable, given the circumstances of the particular situation. In those cases where the contracting officer determines that the price would not be fair and reasonable, the Secretary

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of the military department concerned may use that information in determining whether the unreasonable price causes the compliant metal to be effectively “nonavailable.” Where these “reasonableness” limits should be drawn is a case-by-case decision.

(2) A similar approach may be used to determine whether delays associated with incorporating compliant specialty metals into items being acquired results in the metals being effectively nonavailable.

(C)(1) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3](#)(b)(5) shall submit the request, including the proposed determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L) DPAP/CPIC  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(2) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(b)(6) *Application of specialty metals restrictions to magnets.*

HPM = High performance magnet  
COTS = Commercially available off-the-shelf

Magnet made of specialty metal is:	Commercially available, HPM	NOT Commercially available, HPM	COTS, NOT HPM	NOT COTS, NOT HPM
Incorporated into COTS assembly or COTS end item	NOT restricted	*	NOT restricted	*
NOT incorporated into COTS assembly or COTS end item	Restricted	Restricted	NOT restricted	Restricted
Included in 2 percent minimum content?	Cannot be included in 2 percent minimum content	Cannot be included in 2 percent minimum content	NOT restricted	Can be included in 2 percent minimum content

\* By definition, COTS assemblies and COTS end items will not include a HPM that is not commercially available or any other magnet that is not COTS.

(c) Compliance for commercial derivative military articles.

(i) A department or agency requesting a determination or approval from USD(AT&L) in accordance with DFARS [225.7003-3](#)(c) shall submit the request, including the proposed

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determination, to—

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L) DPAP/CPIC  
3060 Defense Pentagon  
Washington, DC 20301-3060.

(ii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.

(d) National security waiver.

(i) A department or agency shall request a national security waiver from USD(AT&L) in accordance with DFARS [225.7003-3](#)(d) in a timely manner after discovering or being informed of a specialty metals noncompliance in an item, or component thereof, listed at [225.7003-2](#)(a). The department or agency shall submit the request, via the chain of command, including the draft determination and draft letters of notification to the congressional defense committees, as follows:

Director, Defense Procurement and Acquisition Policy  
ATTN: OUSD(AT&L) DPAP/CPIC  
3060 Defense Pentagon  
Washington, DC 20301-3060

(ii) The request shall include—

(A) The quantity of end items to which the waiver would apply;

(B) The time period that the waiver will cover;

(C) How and when the noncompliance was discovered—

(1) By the subcontractor(s);

(2) By the contractor; and

(3) By the department or agency;

(D) A complete description of all of the items or systems containing noncompliant specialty metals;

(E) The contract number(s), date(s), duration, and subcontractor(s) associated with the noncompliance;

(F) The manufacturer and country of origin of the noncompliant material, if known;

(G) Whether the contractor flowed down the DFARS clause to the subcontractors and in what format (e.g., exact quote or substantially the same?);

(H) A technical description of the affected parts, their role in the larger

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assembly, and their function in the end item;

(I) Estimated cost and schedule to replace noncompliant parts if a national security waiver is not granted;

(J) Operational and safety implications;

(K) Other national security considerations (such as how the requested waiver will contribute to national security policy or operational security);

(L) A description of the contractor's efforts to develop and implement a corrective plan to ensure future compliance; and

(M) Information helpful to a determination as to whether any noncompliance was knowing and willful.

(iii) The Director, Defense Procurement and Acquisition Policy, will forward the request to USD(AT&L) as appropriate.