

A. SUPPORTING STATEMENT

1. This is a request for a new information collection requirement.

DoD issued a proposed rule on July 21, 2008, to implement section 842 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) and sections 804 and 884 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) (73 FR 42300). Section 842 of Pub. L. 109-364 added new provisions at 10 U.S.C. 2533b, to address requirements for the purchase of specialty metals from domestic sources. Section 804 of Pub. L. 110-181 added the following information collection requirements:

- Section 804(i) requires a report on the types of commercially available off-the-shelf (COTS) items containing specialty metals that are incorporated in non commercial end items to be delivered to the Government, if the non-commercial end item is in one of the six product categories specified in the statute (i.e., aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition); and
- 10 U.S.C. 2533b(j) (as added by Section 804(d)) requires an offeror to certify that it will take certain actions with regard to specialty metals if the offeror chooses to use the alternative compliance approach when providing commercial derivative military articles to the Government.

This statutory requirement is implemented by DFARS 252.225-7009 and DFARS 252.225-7010.

2. DoD will use this information to prepare the report to Congress on types of commercially available off-the-shelf (COTS) items containing specialty metals that are incorporated in non commercial end items, as required by Section 804(i) of Pub. L. 110-181 and to determine if offerors can use the alternative compliance approach when providing commercial derivative military articles to the Government as required by 10 U.S.C. 2533b(j).

3. Improved information technology will be used to the maximum extent practicable. Where offerors or contractors have automated systems that contain the information needed to report this requirement, they may submit the information in formats that are compatible with the automated systems. DoD is establishing a website to collect the data required for the report of commercially available off-the-shelf components of non-commercial end items.

4. As a matter of policy, DoD reviews the Federal Acquisition Regulation to determine if adequate language already exists. This information collection does not duplicate any other requirement.

5. The information collection associated with small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

6. Less frequent collection of the information would not permit DoD to comply with the Congressional reporting requirements and proposal evaluation requirements of Section 804(i) of Pub. L. 110-181 and 10 U.S.C. 2533b(j), respectively.

7. Collection is consistent with the guidelines in 5 CFR 1320.5(d). The information will not be

collected in a manner that requires an explanation of special circumstances.

8. Public comments were solicited in the Federal Register as required by 5 CFR 1320.8(d).

DoD received the following comments with regard to the reporting requirement: Four respondents described the proposed implementation of the statutory reporting requirement at 225.7003-3(b)(2)(iii) and 252.225-70X4 (now 252.225-7029) as unnecessary and burdensome and suggested deletion or simplification. The respondents stated the following:

- o The information is already available to DoD and any unavailable data needed can be obtained through an industry survey.

- o A dollar threshold should be provided to make it more manageable, such as an exemption for items with a unit cost of less than \$100.

- o It is unclear whether commercial fasteners acquired under the rules of DoD Class Deviation 2008-O0002 are excluded.

- o The contract-by-contract reporting requirement should be eliminated.

- o The statute does not require reporting of the dollar value of the non-commercial item or the dollar value of the COTS item to which the exception applies.

- o The statute does not require reporting the NAICS code.

- o The rule should clarify that the reporting requirement applies only to prime contractors, because fastener manufacturers and distributors would not know whether the fastener was going to be provided in a COTS item (and therefore would be excepted), or whether it would be provided directly into a noncommercial end item.

One respondent pointed out that the Federal Register notice was incorrect in stating that the law required reporting of information regarding the acquisition of noncommercial end items incorporating COTS items containing non-domestic specialty metal. The respondent stated that neither the statute, nor the proposed DFARS text, require the reporting of the type of specialty metal in COTS items incorporated into non-COTS end item (i.e., no requirement to identify only those COTS items with non-domestic specialty metal).

DoD Response: The intent of the clause at 252.225-7029 is to obtain information on COTS items incorporated into noncommercial end products, only if those COTS items were acquired using the exception authority provided at 10 U.S.C. 2533b(h) (as implemented in paragraph (c)(2) of the clause at DFARS 252.225-7009). It would not be necessary to use this exception if a COTS item is known to contain specialty metals melted or produced in the United States. However, the exception could be used if the source of the specialty metals in a COTS item is known to be non-domestic or is unknown.

The report required by the clause at 252.225-7029 is designed to collect consistent data on the description of the types of items being acquired as COTS items under the exception in paragraph (c)(2) of the clause at DFARS 252.225-7009. To alleviate the burden on prime contractors, who are ultimately responsible for reporting this information to DoD, and to ensure consistency in the data reported, a point and click reporting tool is provided for reporting this data at:

http://www.acwq.osd.mil/dpap/cpic/ic/restrictions_on_specialty_metals_10_usc_2533b.html.

DoD cannot eliminate the contractor reporting requirement, because DoD has no other way to obtain meaningful information to prepare the report to Congress required by Section 804(i) of Public Law 110-181. An industry survey is not possible in the time allowed for this report.

After reviewing the comments, DoD has amended the reporting requirement as follows:

- o Inclusion of a threshold of \$100 per item value. Although the statute does not provide a dollar threshold, inclusion of a threshold eliminating the requirement to report COTS items of \$100 or less appears to be a reasonable interpretation of the requirement.
- o Clarification that commercial fasteners acquired under a domestic non-availability determination, or any exception other than COTS, need not be reported.
- o Elimination of the collection of the information on a contract-by-contract basis.
- o Elimination of the requirement for contractors to provide dollar values, recognizing that this requirement was not specified by statute and could be a burden to contractors and subcontractors.

DoD did not eliminate the use of NAICS codes, as their use permits organization of the data and allows DoD to provide a point-and-click web reporting system that requires the contractor to make limited choices from a menu of finite options.

DoD agrees that the prime contractor is responsible for this reporting requirement. This is clear in that the clause at 252.225-7029 does not include any flow down requirement. The report applies to any COTS items incorporated in non-commercial items when the COTS exception was relied upon. Implicit in this requirement is the prime contractor's responsibility to work with its supply chain as necessary to determine which items are relying on this exception.

9. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. The information collected will be disclosed only to the extent consistent with prudent business practice, current regulations, and statutory requirements. No assurance of confidentiality is provided to respondents.

11. No sensitive questions are involved.

12. Based on estimates of DoD subject matter experts and FY 2007 FPDS data, the estimated annual cost to the public is as follows:

a. DFARS 252.225-7009. Reporting of COTS components in non-commercial end items in the 6 product categories:

Number of respondents: 3,835.

Responses per respondent: 1.

Responses: 3,835.

Hours per response: 80.

Hours: 306,800.

Average wages: \$50*

Public cost: \$15,340,000.

This burden is substantially less than was estimated in the Federal Register notice, because three quarters of the reporting period has already passed prior to issuance of the final rule. Only those contractors with contracts awarded after issuance of the final rule and before October 1, 2009, will be required to report. Furthermore, the reporting requirement has been simplified in response to public comments, as explained in paragraph 8.

b. DFARS 252.225-7010. Certification with regard to use of market basket approach for

commercial derivative military articles.

Number of respondents: 50.
Responses per respondent: 1.
Responses: 50.
Hours per response: 200.
Hours: 10,000.

Average wages: \$50*
Public cost: \$500,000.

c. Total.

Number of respondents: 3,885.
Responses per respondent: 1.
Total responses: 3,885.
Hours per response: 81.5443 (average)
Total hours: 316,800.

Average wages: \$50*
Total public cost: \$15,840,000.

* Based on a GS-13, step 5 (equivalent) salary (\$37.22), plus 36.25 percent burden, rounded to nearest dollar.

13. DoD does not estimate any annual cost burden apart from the hour burden in Item 12.

14. DoD estimates that it will take the Government .5 hour to review and process the information in each response identified in paragraph 12.a. and .1 hour to review and process the information in each response identified in paragraph 12.b.. The estimated annual cost to the Government is as follows:

a. DFARS 252.225-7009. Reporting of COTS components in non-commercial end items in the 6 product categories:

Responses: 3,835.
Hours per response: 0.05
Hours: 191.75.

Average wages: \$50*
Total cost to Govt: \$9,587.

b. DFARS 252.225-7010. Certification with regard to use of market basket approach for commercial derivative military articles.

Responses: 50.
Hours per response: 0.1.
Hours: 5.

Average wages: \$50*
Total cost to Govt: \$250.

c. Total.

Total responses: 3,885.
Hours per response: 0.050643 (average)
Total hours: 196.75.

Average wages: \$50*
Total cost to Govt: \$9,837.

* Based on a GS-13, step 5 salary (\$37.22), plus 36.25 percent burden, rounded to the nearest dollar.

15. This is a new information collection requirement.

16. Results of this information collection will not be tabulated or published.

17. DoD does not seek approval to not display the expiration dates for OMB approval of the information collection.

18. There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. Collections of Information Employing Statistical Methods

Statistical methods will not be employed.