

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](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.