
BERRY AMENDMENT REFORM COALITION

Aerospace Industries Association * AeA * CompTIA * Coalition for Government Procurement * Contract Services Association
Electronic Industries Alliance * Government Electronics & Information Technology Alliance * Industrial Fasteners Institute
Information Technology Association of America * National Defense Industrial Association
National Electronic Distributors Association * Professional Services Council * Semiconductor Industry Association
U.S. Chamber of Commerce

Legislative Reforms Needed for Berry Amendment

Issue: The “Berry Amendment” (10 U.S.C. §2533a) requires the Department of Defense (DOD) to procure items containing domestically produced specialty metals (e.g. titanium, stainless steel and other alloys). This decades old statute imposes burdensome administrative requirements on prime contractors, as well as small suppliers, to determine and track country of origin for specialty metal content. It is often not possible to determine the country of origin for specialty metal content. Where it is possible, it is not cost effective for commercial companies selling to DOD to monitor specialty metal content on a part by part basis, especially where only minute quantities are involved. Current law forces suppliers to have separate production runs or lines for military and commercial items, dramatically increasing costs to DOD.

This issue is of vital importance to the DOD industrial base because of the cost implications and because of its effect on the future ability of DOD to access commercial products and the latest commercial technologies. The Berry Amendment is inconsistent with and undermines the DOD policy for the past fifteen years of capitalizing on commercial products and processes to meet its needs for better, faster and more cost effective products with the latest commercial technologies.

Legislative Reforms: Congress must reform the Berry Amendment with a more pragmatic approach to preserve the broad U.S. defense supplier base while ensuring that the domestic specialty metals’ industry is protected. There are three needed changes:

- An exception to the Berry Amendment for commercial items at any tier of the supply chain, while still requiring suppliers to obtain parts that are military unique from domestic sources;
- An alternative compliance approach that allows contractors to use commingled foreign and domestic specialty metals so long as the contractors procure an equivalent amount of domestically-melted specialty metal; and
- An exception for items containing specialty metals purchased at any tier, provided the estimated value of such content is below the Simplified Acquisition Threshold (currently \$100,000) or 10% of the total price of an item, whichever is less.

These modifications provide a balanced solution that will promote a healthy domestic supply chain and preserve a diversified defense industrial base, control production costs, and allow DOD to procure the needed items for the warfighter in a timely, cost effective manner.

Action Requested: The Multi-Association Berry Amendment Reform Coalition and its member companies respectfully urge Congress to support these proposed legislative changes to the Berry Amendment, including an exemption for commercial items at any tier; a streamlined alternative compliance approach for civil-military integration; and an exception for small amounts defined as items containing specialty metals purchased at any tier, provided the estimated value of such items content is below the Simplified Acquisition threshold or 10% of the total price.