



**SPECIALTY METALS RESTRICTIONS  
DEPARTMENT OF DEFENSE**

**SUMMARIES**

---

**Senators, Aerospace Group, DOD Stand Opposed to House Specialty Metal Provisions**

As House and Senate conferees continue to iron out the differences between the versions of the fiscal year 2007 defense authorization bill (H.R. 1585) passed by each body, the two bills' diverging approaches to domestic sourcing restrictions applicable Defense Department purchases of specialty metals are among the debated issues.

The conferees have before them not only the lengthy discussion that accompanies the final Defense Federal Acquisition Regulation Supplement rule waiving the application of the restrictions to purchases of commercial off-the-shelf (COTS) items (see story in this issue), but also letters from a bipartisan group of 10 senators and from the Aerospace Industry Association. In addition, the issues are addressed in a package of legislative "appeals" sent to the conferees by DOD.

In their separate letters urging Senate Armed Services Committee leaders to oppose the provisions contained the House version of the bill, both the 10 senators and AIA contend that these provisions would reduce the "limited" sourcing flexibilities granted to DOD last year for the acquisition of certain end items containing specialty metal when the domestic source restrictions applicable to such metals were codified at 10 U.S.C. 2533b. The specialty metals language inserted by the House Armed Services Committee in the FY 2008 bill--which subsequently passed the House May 17--"would create significant problems for our industrial base, including the likelihood of supply disruptions for major defense projects, and would result in increased costs to the American taxpayer," the senators said in an Oct. 19 letter to SASC Chairman Carl Levin (D-Mich.) and Ranking Republican John McCain (R-Ariz.).

The letter was signed by Sens. Pat Roberts (R-Kan.), Patrick Leahy (D-Vt.), Kit Bond (R-Mo.), Sam Brownback (R-Kan.), Jim DeMint (R-S.C.), Charles Grassley (R-Iowa), Tom Harkin (I-Iowa), Johnny Isakson (R-Ga.), Trent Lott (R-Miss.), and Ken Salazar (D-Colo.), none of whom currently serves on the SASC.

The senators referred specifically to four provisions in the House bill:

- Section 808, which would require that the under secretary of defense for acquisition, technology and logistics issue guidance for all DOD major system acquisitions that could contain strategic materials--such as specialty metals--to specify that a proposal evaluation

criterion will be the supplier's record of sustained reinvestment in domestic production of such material.

- Section 809, which would tighten the requirements for issuance of a domestic nonavailability determination (DNAD) for specialty metals by providing that availability of such metals in "required form" is to be determined with reference to mill products--such as slab, plate and sheet--rather than end items, and also clarify that the specialty metal restrictions apply to COTS items.
- Section 845, which would require that costs related to compliance with limitations on acquisitions of items covered by domestic source restrictions--the Berry amendment (10 U.S.C. 2533a) and the specialty metals statute--be excluded from consideration in evaluations of offers.
- Section 846, which would set limits on specialty metals DNADs applying to more than one DOD prime contract.

These House provisions would "remove, or substantially reduce" what limited flexibilities were provided to DOD last year for the procurement of nondomestic specialty metals, the senators said. "If anything, even greater flexibility is justified" for DOD to procure specialty metals to supply the military, they said. Further, the senators backed language included by the SASC in the Senate version of the bill--which was passed by that body Oct. 1--that endorses DOD's implementation of last year's specialty metal procurement statute, including a DNAD issued in April 2007 for the procurement of fasteners containing specialty metals. Some members of the HASC and the U.S. specialty metals industry have argued that DNADs issued by DOD, including the fasteners DNAD, are overly broad and lack sufficient market research establishing the basis of the domestic nonavailability.

In an Oct. 18 letter to Levin, AIA expressed views similar to those of the 10 senators. The specialty metal procurement provisions passed by Congress in the FY 2007 defense authorization act (Pub. L. No. 109-364) balanced the economic health of the U.S. specialty metals industry and the defense industry's ability to provide DOD with military equipment, AIA said. "Unfortunately, it is becoming more difficult for our aerospace and defense manufacturing industries to deliver the needed equipment to the men and women in uniform because of the specialty metals restrictions as they are being applied to certain components, subsystems, and commercial items," AIA said.

Meanwhile, DOD Oct. 9 sent to Capitol Hill a package of legislative appeals on the FY 2008 defense authorization bill, in which the department said it "strongly opposes" all four of the House provisions related to domestic sourcing restrictions. DOD said the following with regard to the four provisions:

- Section 808 would "introduce unnecessary, costly, ineffective, and counter-productive evaluations criteria on every sub-tier supplier providing items containing steel or specialty metals."

- Section 809's redefinition of "required form" would preclude DOD from issuing waivers for "small, widely-used items," including fasteners and populated circuits, and other items containing "trace amounts" of specialty metals.
- Section 845 would allow costs associated with compliance with domestic sourcing statutes "to be 'ignored' for purposes of evaluating proposals and awarding contracts," and would result "in the introduction of uncompetitive, duplicative, inefficient and ineffective processes into the commercial and dual use supply chain that the Department relies upon heavily."
- Section 846 would "negate the usefulness of DNADs for commercial and dual use items because the accounting requirements for the specialty metals included in end items and components would be so costly and inefficient."