



Berry Amendment Information

- The Berry Amendment restricts the Defense Department from acquiring a number of items, including food, clothing, fabrics, and certain tools that are not produced in the United States. The aerospace and defense industry is impacted by provisions that apply to specialty metals:
 - Steel with more than 1.65 percent manganese, .6 percent silicon or copper, or .25 percent aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.
 - Alloys of nickel, iron-nickel, or cobalt with other alloying metals in excess of 10 percent.
 - Titanium and titanium alloys.
 - Zirconium and zirconium alloys.
- The Berry Amendment was originally added to the Fifth Supplemental National Defense Appropriations Act of 1941. It was made permanent in 1993, then added to the United States Code in 2002.
- In 1972 Defense Secretary Melvin Laird issued a memo to provide guidance on how to implement the Berry amendment. While stating the amendment applied to the entire supply chain, it stated that procurement of components on the subcontractor level “make(s) impracticable any precise evaluation of all such purchases, even at enormous expense in both time and money. It is apparent, from the legislative history of the provision, that it was not intended that this (d)epartment achieve or attempt to achieve the impossible in its implementation.”
- Industry has stepped forward to self-disclose a potential problem with non-conformance within the aerospace supply chain that began to surface last year. This occurred after industry learned DoD had moved away from the 33-year-old policy spelled out in the Laird memo.
- The problem appears to have been compounded by a difference between the language in the statute and the DFARS clause that implements the statute. The statute does not appear to cover domestic metals in components and parts -- only the purchase of metals.
- We are not sure of the magnitude of the problem or the impact on the industry. There have been delays in deliveries of some finished products and the DoD has withheld

partial payment on some cases where subcontractors could not document that small items like nuts and bolts came from domestic sources.

- This is largely a problem with documentation, not with the substance of the Berry Amendment. The industry has always complied with the spirit of the law by using U.S. suppliers for major components and structures, and no one is suggesting otherwise.
- DoD has been encouraging industry to buy commercially available products whenever possible. Those products are not tracked on the nuts-and-bolts level, especially in today's globally integrated supply chain.
- We believe there are actions that can be taken by DoD to help mitigate the problem while the department works together with industry to develop a long-range solution. We are working with DoD now to allow products to continue to be delivered and accepted.