



## Oppose Proposed House Restrictions on Specialty Metals

The Specialty Metals Availability Reform Team (SMART) Coalition is strongly opposed to specialty metals restrictions that would limit the Department of Defense's (DOD's) flexibility to support the war fighter.

**Issue / Background:** Specialty metals domestic source restrictions (previously part of the "Berry Amendment") have been hotly debated over the past few years. Last year Congress addressed this issue in the 2007 National Defense Authorization Act (Section 822) and DOD is in the process of implementing the legislation now. Unfortunately, the House Armed Services Committee (HASC) has included four provisions (Sections 808, 809, 845, and 846) in its FY 2008 Defense Authorization bill (H.R. 1585) that would not only reverse last year's legislation, but would make it even more difficult and expensive for DOD to implement. The Administration has threatened to veto any bill that includes these restrictions. The SMART Coalition shares concerns with these provisions as follows.

**Section 808:** would require that major weapon system competitions include an evaluation criteria addressing the extent to which each prospective specialty metals supplier at all levels of the supply chain has a record and plan for reinvestment in domestic production capacity. **These reinvestment costs would be flowed down, making the application of this section more onerous and costly for the American taxpayer.**

**Section 809:** would narrow the definition of "required form" contained in last year's Act to exclude any "form" other than mill products such as slab, plate, and sheet, when determining domestic availability. Parts manufacturers, for example, require specialty metals in many forms beyond the narrow definition of mill products. It would also **significantly impair the DOD's ability to buy commercial-off-the-shelf (COTS) items.** The section would be **retroactive to December 2006, putting at risk contractors who are performing contracts,** or have submitted proposals, that rely on the determinations of domestic non-availability (DNAD) already made by DOD. Further, **the administration and accounting requirements would increase costs and decrease availability of materiel for weapon systems** at a time when these systems are vitally needed and when the costs of such systems are being criticized by members of Congress.

**Section 845:** would exclude costs of compliance with domestic source restrictions in any competition where one offeror was a United States firm and another a foreign source firm benefiting from the qualifying country exemption. **This section is unclear in several respects:** it could be read to require consideration of such costs when evaluating compliant offers from domestic and foreign sources or it could be read to require commercial companies to comply even if it means that they would become noncompetitive in the commercial marketplace. It is not clear what costs would be included and recoverable, such as the real cost of compliance including changes to the inventory systems, to drawings, to specifications, to supplier agreements throughout the supply chain, to production processes, to logistics support, to lean manufacturing, and many more areas. These costs would never be affordable by DOD even if compliance were something that could be achieved.

The Specialty Metals Availability Reform Team is comprised of: American Electronics Association, Aerospace Industries Association, Computing Technology Industry Association, Coalition for Government Procurement, Contract Services Association, Electronic Industries Alliance, Government Electronics & Information Technology Association, Industrial Fasteners Institute, Information Technology Association of America, National Defense Industrial Association, National Electronic Distributors Association, Professional Services Council, Semiconductor Industry Association and the U.S. Chamber of Commerce. We represent thousands of companies that provide products, services and personnel to the Federal government.

Section 846: would require that nonavailability determinations to subject to a formal rulemaking process, significantly **impairing the longstanding authority of the Secretary to make timely determinations regarding domestic materials needed to supply the war fighter**. It would also add additional costs related to accounting for non-compliant materials and creates additional disclosure requirements during the DOD DNAD process. These additional costs and delays will be a significant limitation on the DOD's ability to support the war fighter with timely delivery of needed support.

These provisions, which would reverse the authorities granted DOD in last year's NDAA, fail to consider DOD's thoughtful implementation and would lead to severe, negative impacts by:

- Failing to recognize that DOD has done extensive market research as part of their consideration of industry practices and the availability of domestic specialty metals to manufacture items for DOD.
- Failing to recognize that there is a distinct difference between procuring COTS items and military-unique items made specifically for national security purposes.
- Increasing the administrative cost and burden to all DOD suppliers, especially small manufacturers, such as those companies that make fasteners and other low dollar parts.
- Reversing the domestic nonavailability determination made by DOD for electronic circuit card assemblies in order to assure the continued availability of those items to DOD.
- Ignoring the fact that the broad nonavailability determinations approved or under consideration by DOD are primarily for low dollar value components intended to relieve the burden of certifying and stocking unique materials and parts for DOD, a process that is costly and contrary to standard industry practice, particularly for commercial items.

**Health of the Specialty Metals Industry:** The domestic specialty metals industry, and particularly the titanium producers, is experiencing a period of significant profits with growth rates over the past 5 years exceeding 50% and profit margins exceeding 25%. Stock prices are also up significantly over the past three years for the three main titanium companies (960%, 1700% and 1300%). Moreover, the strong demand and high prices in the titanium industry are expected to continue for the next decade, with a continuous upward trend with at most slight dips, very different from the cyclical nature of the last two decades. With the strong financial health these numbers indicate, it is difficult to justify the added protections the House is seeking with the associated burdens on support to the war fighter and substantial increased costs for industry and the taxpayer.

**Action Requested:** The Specialty Metals Availability Reform Team (SMART) Coalition and its tens of thousands of member companies respectfully urge Congress to oppose the referenced provisions included in the House version of the FY 2008 National Defense Authorization bill. The SMART Coalition also urges Congress to enact the provisions adopted by the Senate (S. 2766) last year. These provisions would exempt commercial items, exempt items where the specialty metals content is of de minimis value, and provide a mechanism for dual-use item suppliers to comply with the intent of the source restrictions by procuring the appropriate quantity of domestic specialty metals for the DOD without having to alter their manufacturing processes to account separately for those specialty metals.