

The Berry Amendment:

Achieving 100% Compliance in the Parachute Industry

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BERRY IS NOT GUARANTEED

- **Defense Science Board (August 2008)**

"This will require adjusting the [International Traffic in Arms Regulations], export controls, Berry Amendment, specialty metals [restrictions], and other limitations that hinder DoD's ability to procure world-class capabilities from the rapidly evolving global technology and security market," the task force's report says.

OVERVIEW

1. History of Berry
2. Statutory and Regulatory Basis
3. Ensuring Compliance
4. Oops, I'm Non-Compliant - Paths to DNAD
5. Compliance Plans (i.e Avoiding Trouble)
6. Working with Congress...Maybe

HISTORY OF BERRY

- Who's Berry?



- Ellis Yarnal Berry (R)
 - Served as South Dakota's Western District Congressman from 1951 - 1971.

HISTORY OF BERRY

- Buy American provisions date to 1940s
- 1952
 - Congressmen E.Y. Berry introduced his amendment to DoD's Buy American restrictions.
 - Originally covered food and clothing.
- 1972
 - Specialty Metals clause was added to Berry Amendment coverage.

HISTORY OF BERRY

- 2007
 - Specialty metals and textiles split
- 2008
 - Specialty metals clause sees major changes
 - No changes to Berry

STATUTORY BASIS TODAY

- 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions
 - (a) REQUIREMENT. – Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

STATUTORY BASIS

- 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions

- (b) COVERED ITEMS. – An item referred to in subsection (a) is any of the following:

(1) An article of --

woven silk cloth, (including such the form materials, or	(D) cotton and other natural fiber products, or silk blends, spun silk yarn for cartridge synthetic fabric or coated synthetic fabric all textile fibers and yarns that are for use in fabrics), canvas products, or wool (whether in of fiber or yarn or contained in fabrics, manufactured articles)
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EXCEPTIONS

- Exception for combat operations or support of contingency operations is NOT available
- Applies only to:
 - (b)(1)(A) – food
 - (b)(2) – specialty metals, including stainless steel flatware
 - (b)(3) – hand or measuring tools

EXCEPTIONS

- Exception for unusual and compelling circumstances is generally NOT available
- Applies only to an award based on other than competitive procedures

EXCEPTIONS

- Availability Exception
 - satisfactory quality and sufficient quantity
 - cannot be procured as and when needed at United States market prices

LEGISLATIVE CHANGES

- Recent statutory changes
 - All components associated with clothing be compliant
 - Berry amendment and specialty metals clause split

REGULATORY BASIS

- **DFARS 225.7002-1 – Restrictions**
 - Food
 - Clothing
 - **Tents/Tarpaulins/Covers**
 - **Cotton and Other Natural Fiber Products**
 - **Woven Silk or Woven Silk Blends**
 - **Spun Silk Yarn for Cartridge Cloth**
 - **Synthetic Fabric or Coated Synthetic Fabric**
 - **Canvas Products**
 - **Wool (including in manufactured articles)**
 - **Any Item of Individual Equipment containing textiles**
 - **Hand or Measuring Tools**

REGULATORY BASIS

■ DFARS 225.7002-2 – Exceptions

- Acquisitions below SAT
- Availability
- Outside the United States in support of combat ops
- Commissary resale
- Incidental amounts of cotton
- Fiber and yarn in synthetics
 - Not applicable to parachutes

REGULATORY BASIS

- Is there a de minimis exception for cotton?
 - Unofficial DOD opinion - The aggregate [estimated value] of all the cotton, other natural fibers or wool must be less than 10% of the price of the [end] product [i.e. the contract line item in question.]

REGULATORY BASIS

- Is there a de minimis exception for cotton?
 - Unofficial DOD opinion - The SAT threshold must be computed on a contract basis, covering the entire quantity of end product in question. If a contract buys 25 Parachute CYZ end products, the estimated value of the cotton, other natural fibers, or wool in those 25 CYZ end products cannot exceed the SAT.

REGULATORY BASIS

DOD Unofficial opinion - There may arise a circumstance where a contract buys 2 different kinds of end products -- 25 CYZ end products and also 15 ACF end products. While the SAT is a concept generally applied to Contracts, we believe it is appropriate to apply it separately to different types of end products purchased under a single contract. The content is "incidental" if it does not exceed 10% of the price of the full end product quantity total and that same content does not exceed the SAT -- even if the combined content of different end products (e.g. 25 CYZ and 15 ACF) might exceed the SAT.

REGULATORY BASIS

DFARS 225.225-7012 – Preference for Certain Domestic Commodities

- Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, in solicitations and contracts exceeding the simplified acquisition threshold.

ENSURING COMPLIANCE

- What to do when you think there's a problem -
 - Contact your attorney – False Claims/Anti-Deficiency Act may apply (be proactive)
 - Gather facts and data
 - Self-report
 - Develop a compliance plan
 - Make life easy on your contracting officer and the government

ENSURING COMPLIANCE

- Questions to ask
 - How are we ensuring our material is compliant?
 - How are we ensuring our suppliers are compliant?
 - What are our responsibilities
 - For ourselves?
 - For our suppliers?
 - Are we being proactive in our compliance?
 - Do we keep good records?
 - Do we flow-down requirements?
 - Do we conduct supplier audits?

COMPLIANCE PLANS

- Other issues –
 - Past non-compliance?
 - Existing non-compliant inventory?
 - Delivery schedules?

PATHS TO A DNAD

- To whom will it apply?
 - DOD-wide/multi-agency contract = DCMA
 - Single service contract = Service Secretary
- Who's asking for the DNAD?
 - Industry or individual company?
- DNAD request sent to USD AT&L or Service

PATHS TO A DNAD

- Option 1
 - Apply for a by contract DNAD for non-available products via the PCO

- Option 2
 - Industry-wide DNAD issued by Undersecretary of Defense for Acquisition, Technology & Logistics

DOMESTIC NON-AVAILABILITY DETERMINATION (DNAD)

- How do we obtain a DNAD?
 - Documentation required for a DNAD
 - Who can make Domestic Non-Availability Determinations?

DOMESTIC NON-AVAILABILITY DETERMINATION (DNAD)

- **Specific information required for a DNAD request:**
 1. Item, quantity, length of time DNAD is needed
 2. Market research justifying the non-availability
 3. Analysis of alternatives
 4. Written certification that alternatives are unacceptable
 5. Report and recommendation of the Contracting Activity
 6. Potential political ramifications
 7. Outcome if a DNAD is not approved

COURSE OF ACTION - DNAD

1. Contact Service or DCMA
2. Gather and consolidate necessary information
3. Provide industry data related to non-compliant components and compliance plan
4. Meet with Service or DCMA in advance of DNAD request (as appropriate)
5. Submit formal waiver request letter to Service Secretary or AT&L (silver platter)
6. Letter of support sent from congressional supporters (as appropriate)
7. Provide Service or DCMA additional information on DNAD (as requested)
8. Await DNAD decision

WORKING WITH CONGRESS

- Who are the key players in the Executive and Legislative branches of government that can help?
 - Constituent interests
 - Philosophical allies
 - National security advocates
- We need to cautiously engage Congress so as not to alienate the very people responsible for issuing a waiver

Senate Committee on Armed Services

Democrats



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(RI)



Joe Lieberman
(CT)



Robert Byrd
(WV)



Ted Kennedy
(MA)



Carl Levin
(MI)

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Hillary Clinton
(NY)



Evan Bayh
(IN)



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(NE)



Bill Nelson
(FL)



Daniel Akaka
(HI)



Claire McCaskill
(MO)



Jim Webb
(VA)



Mark Pryor
(AR)

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John Warner
(VA)



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(TX)



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(FL)



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(MS)

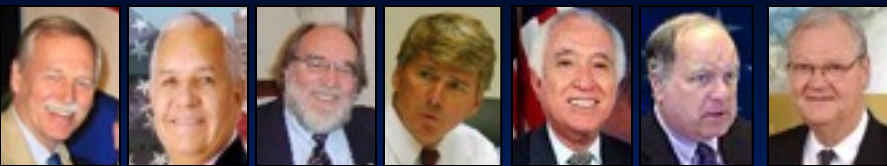
House Armed Services Committee

Democrats

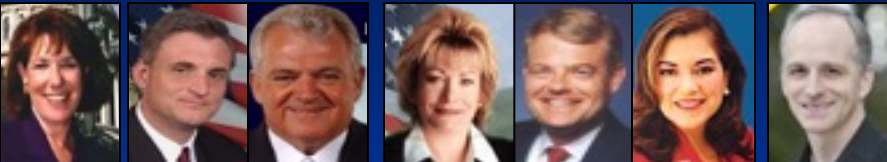
Chairman

Ranking

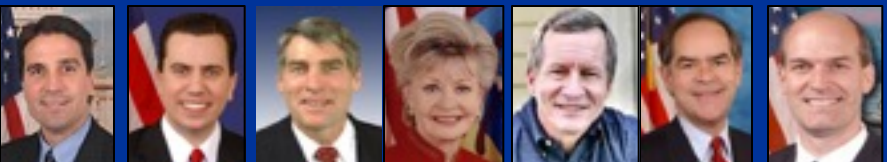
Republicans



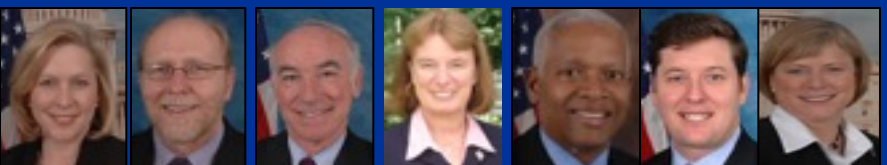
Vic Snyder (AR) Silverstre Reyes (TX) Neil Abercrombie (HI) Gene Taylor (MS) Solomon Ortiz (TX) John Spratt (SC) Ike Skelton (MO)



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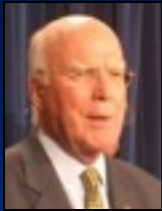


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Senate Appropriation Committee- Defense

Democrats

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(VT)



Robert
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(WV)



Daniel
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(HI)



Richard
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(IL)



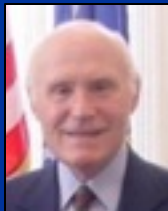
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Herbert
Kohl
(WI)



Barbara
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Ranking



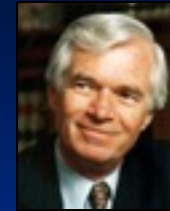
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(MS)



Kit Bond
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Judd Gregg
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Mitch
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(KY)



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Hutchison
(TX)

Republicans

House Appropriation Committee- Defense

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(AL)



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Chairman

John
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Ranking



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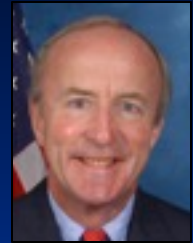
Todd Tiahrt
(KS)



David
Hobson
(OH)



Jack
Kingston
(GA)



Rodney
Frelinghuysen
(NJ)



Kay Granger
(TX)

Republicans

CONGRESSIONAL SUPPORT

Airborne Systems Global - Pennsauken, NJ (Rep. Jim Saxton)

Aerostar International - Sioux Falls, SD (Sen. John Thune, Rep. Stephanie Herseth)

Complete Parachute Solutions, Inc. – DeLand, FL
(Sen. Bill Nelson, Rep. John Mica)

Irvin Aerospace – Santa Ana, CA (Rep. Dana Rohrabacher)

Pioneer Aerospace – South Windsor, CT (Sen. Joseph Lieberman, Rep. John Larson), Columbia, MS
(Sen. Thad Cochran, Sen. Roger Wicker, Rep. Gene Taylor)

OTHER SUPPORT?

Airtec GMBH & Co. KG- Lebanon, OH (Rep. Jean Schmidt)

BUTLER PARACHUTE SYSTEMS, INC.- Roanoke, VA (Rep. Bob Goodlatte)

Columbus McKinnon Corp.- Cedar Rapids, IA (Rep. David Loebsack),
Chattanooga, TN (Rep. Zach Wamp)

DJ ASSOCIATES, INC.- Fort Smith, AR (Rep. John Boozman)

GLADDING BRAIDED PRODUCTS, LLC- South Otselic, NY (Rep. Michael Arcuri)

HLC INDUSTRIES, INC.- Bala Cynwyd, PA (Rep. Jim Gerlach)

Offray Specialty Narrow Fabrics, Inc.- Chester, NJ (Rep. Rodney Frelinghuysen),
Watson town, PA (Rep. Chris Carney)

PARA PUBLISHING- Santa Barbara, CA (Rep. Lois Capps)

OTHER SUPPORT?

PARA-GEAR EQUIPMENT CO., INC-Skokie, IL (Rep. Jan Schakowsky)

Porcher Sport-Greensboro, NC (Rep. Howard Coble)

PRECISION FABRICS GROUP, INC.- Greensboro, NC (Rep. Howard Coble),
Roanoke, VA (Rep. Bob Goodlatte)

SILVER PARACHUTE SALES & SERVICE- Hayward, CA (Rep. Pete Stark)

SSK INDUSTRIES, INC. - Lebanon, OH (Rep. Jean Schmidt)

SUN PATH PRODUCTS, INC.- Zephyrhills, FL (Rep. Ginny Brown-Waite)

TAPECRAFT CORPORATION- Oxford, AL (Rep. Mike Rogers)

WICHARD, INC. - Winooski, VT (Rep. Peter Welch)

Southern Weaving Company - Greenville, SC (Rep. Bob Inglis), Anderson, SC
(Rep. J. Gresham Barrett), Tarboro, NC (Rep. G.K. Butterfield),
Easley, SC (Rep. J. Gresham Barrett)

SUMMARY

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2. Statutory and Regulatory Basis
3. Ensuring Compliance
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5. Compliance Plans (i.e Avoiding Trouble)
6. Working with Congress...Maybe

QUESTIONS?

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