

RAYTHEON COMPANY

DEPARTMENT OF DEFENSE SPECIALTY METALS SOURCE RESTRICTIONS INFORMATION FOR SUPPLIERS AND SUBCONTRACTORS AS OF OCTOBER, 2009

I. INTRODUCTION

- Federal laws and regulations restrict the source of specialty metals included in items delivered under contracts with the Department of Defense (DoD).
- Specialty metals include certain steels, including most stainless steels, and other metal alloys.
- Subject to certain exceptions, specialty metals contained in items delivered to DoD must have been melted or produced in the United States or its outlying areas.
- This document provides basic information about the DoD specialty metals restrictions.
- Raytheon provides this information as a convenience to its suppliers and subcontractors to assist them in complying with their contractual requirements to Raytheon regarding the source of specialty metals included in items that they supply. While Raytheon believes that this information is accurate, our suppliers and subcontractors bear the ultimate responsibility (i) for reviewing all relevant documents and (ii) for complying with the DoD specialty metals source restrictions.

II. SPECIALTY METALS SOURCE RESTRICTIONS

A. OLD LAW

The Berry Amendment, 10 U.S.C. § 2533a, requires DoD to buy certain items, including those containing specialty metals, only from U.S. or qualifying country sources.

B. INTERIM LAW

Legislation enacted in 2006 removed specialty metals from the Old Law and established a new section in the U.S. Code, 10 U.S.C. § 2533b, specifically for specialty metals. Like the Old Law, the Interim Law requires DoD to buy items containing specialty metals only from U.S. or qualifying country sources. The effective date of the Interim Law is November 16, 2006.

C. NEW LAW

On January 28, 2008, the President signed the FY 2008 DoD Authorization Act, which contains provisions that change certain aspects of the Interim Law. Like the Old Law and the Interim Law, the New Law requires DoD to buy items containing specialty metals only from U.S. or qualifying country sources. The effective date of the New Law is January 28, 2008.

D. CONTRACT CLAUSES AND NOVEMBER 8, 2007 DFARS AMENDMENTS

The specialty metals restrictions are currently implemented by (i) five sets of contract clauses – one DFARS set for the Old Law, two class deviation sets for the Interim Law, and two sets for the New Law – and (ii) November 8, 2007 amendments to the DFARS.

Note: With rare exceptions, Raytheon’s DoD prime contracts will contain the Alt. I version of the applicable DFARS contract clause (or the new contract clause at DFARS 252.225-7009) because articles delivered to DoD under those contracts are end items or components of (i) aircraft, (ii) missile and space systems, (iii) ships, (iv) tank and automotive items, (v) weapons, and/or (vi) ammunition.

1. **Old Law contract clause, DFARS 252.225-7014, Alt. I**, applicable to DoD prime contracts awarded *prior to November 16, 2006*.
 - a. Requires that specialty metals incorporated in articles delivered under the contract be melted in the U.S. or its outlying areas.
 - b. This requirement does not apply to specialty metals that are –
 - i. Melted in a qualifying country; or
 - ii. Incorporated in articles manufactured in a qualifying country.
 - c. The requirement applies to all Raytheon suppliers and subcontractors at every tier.
 - d. Raytheon’s suppliers and subcontractors are required to flow Alt. I down to their suppliers and subcontractors with instructions that they must flow the clause down to their suppliers and subcontractors.
 - e. The clause defines “qualifying country,” and “specialty metals.”
2. **Interim Law class deviation contract clause, 252.225-7014, Alt. I (DEVIATION)**, applicable to DoD prime contracts awarded *from November 16, 2006 through October 25, 2007*.
 - a. Requires that specialty metals incorporated in articles delivered under the contract (“end items,” as defined in the clause) be melted or produced in the U.S. or its outlying areas.
 - b. This requirement does not apply to specialty metals that are –
 - i. Melted in a qualifying country;

- ii. Incorporated in articles manufactured in a qualifying country; or
 - iii. Incorporated in certain commercially available electronic components.
 - c. The requirement applies to all Raytheon suppliers and subcontractors at every tier.
 - d. Raytheon's suppliers and subcontractors are required to flow Alt. I down to their suppliers and subcontractors with instructions that they must flow the clause down to their suppliers and subcontractors.
 - e. The clause defines "electronic component," "end product," "qualifying country," and "specialty metals."
3. **Interim Law class deviation contract clause, 252.225-7014, Alt. I (DEVIATION 2007-O0011)**, applicable to DoD prime contracts awarded *from October 26, 2007 through January 28, 2008*,¹ as amended by a DFARS amendment effective *November 8, 2007*.
- a. Requires that specialty metals incorporated in articles delivered under the contract ("end items," as defined in the clause) be melted or produced in the U.S. or its outlying areas.
 - b. This requirement does not apply to specialty metals that are –
 - i. Melted in a qualifying country;
 - ii. Incorporated in articles manufactured in a qualifying country;
 - iii. Contained in commercially available off-the-shelf (COTS) items, acquired either as end items or components; or
 - iv. Incorporated in certain commercially available electronic components.
 - c. The requirement applies to all Raytheon suppliers and subcontractors at every tier.

¹ Even though the effective date of the New Law is January 28, 2008, DoD promulgated the new Alt. I clause on January 29, 2008, effective on that date.

- d. Raytheon's suppliers and subcontractors are required to flow Alt. I down to their suppliers and subcontractors with instructions that they must flow the clause down to their suppliers and subcontractors.
 - e. The clause defines "electronic component," "end product," "qualifying country," "specialty metal," and "commercially available off-the-shelf item."
4. **Interim Law DFARS amendments, published November 8, 2007,** applicable to DoD prime contracts awarded *from November 8, 2007 through January 28, 2008.*
- a. Amended the DFARS as follows –
 - i. Added a definition of COTS to DFARS 202.101;
 - ii. Added a new DFARS 212.570, which provides that the specialty metals requirement is not applicable to contracts and subcontracts for the acquisition of COTS items; and
 - iii. Added an exception for COTS items as a new subsection (q) of DFARS 225.7002-2.
 - b. Did not change the language of the Alt. I (DEVIATION 2007-00011), but effectively amended it for DoD prime contracts awarded on and after November 8, 2007.
 - c. Stated in the preamble (72 Fed. Reg. 63114) that the amendments are effective upon publication (November 8, 2007), but noted that contracting officers, at their discretion, may include any FAR/DFARS changes in any existing contract with appropriate consideration.
5. **New Law class deviation contract clause, 252.225-7014, Alt. I (DEVIATION 2008-O0002),** applicable to DoD prime contracts awarded *from January 29, 2008² to July 28, 2009.*
- a. Requires that specialty metals incorporated in the following items or components thereof be melted or produced in the U.S. or its outlying areas –
 - i. Aircraft.

² As noted, even though the effective date of the New Law is January 28, 2008, DoD promulgated this Alt. I clause on January 29, 2008, effective as of that date.

- ii. Missile or space systems.
 - iii. Ships.
 - iv. Tank or automotive items.
 - v. Weapon systems.
 - vi. Ammunition.
- b. This requirement does not apply to specialty metals that are –
- i. Melted in a qualifying country; if the specialty metals are incorporated into end items or components. (The requirement *does apply*, however, if DoD acquires, either directly or through a contractor, specialty metal in raw form as an end item.);
 - ii. Incorporated in articles manufactured in a qualifying country;
 - iii. Contained in COTS items, acquired either as end items or components (with some exceptions pertaining to high performance magnets or COTS fasteners that are not incorporated into COTS end items);
 - iv. Incorporated in electronic components; or
 - v. Incorporated in fasteners that are commercial items and are acquired from a manufacturer that certifies it will purchase, during the relevant calendar year, at least 50 percent of the specialty metals, in the required form, used to produce such fasteners from domestic sources (i.e., the specialty metals were melted or produced domestically).
- c. The requirement applies to all Raytheon suppliers and subcontractors at every tier.
- d. Raytheon’s suppliers and subcontractors are required to flow Alt. I down to their suppliers and subcontractors with instructions that they must flow the clause down to their suppliers and subcontractors.
- e. The clause defines “assembly,” “commercial derivative military article,” “commercially available off-the-shelf item,”

“component,” “electronic component,” “end item,” “produce,” “qualifying country,” “required form,” “specialty metal,” and “subsystem.”

6. **New Law contract clause, DFARS 252.225-7009**, applicable to DoD prime contracts awarded *on and after July 29, 2009*.
- a. Requires that specialty metals incorporated in the following items or components thereof be melted or produced in the U.S. or its outlying areas –
 - i. Aircraft.
 - ii. Missile or space systems.
 - iii. Ships.
 - iv. Tank or automotive items.
 - v. Weapon systems.
 - vi. Ammunition.
 - b. This requirement does not apply to specialty metals that are –
 - i. Melted in a qualifying country; if the specialty metals are incorporated into end items or components. (The requirement *does apply*, however, if DoD acquires, either directly or through a contractor, specialty metal in raw form as an end item.);
 - ii. Incorporated in articles manufactured in a qualifying country;
 - iii. Contained in COTS items, acquired either as end items or components (with some exceptions pertaining to high performance magnets or COTS fasteners that are not incorporated into COTS end items);
 - iv. Incorporated in electronic components; or
 - v. Incorporated in fasteners that are commercial items and are acquired from a manufacturer that certifies it will purchase, during the relevant calendar year, at least 50 percent of the specialty metals, in the required form, used to produce such

fasteners from domestic sources (i.e., the specialty metals were melted or produced domestically).

- c. The requirement applies to all Raytheon suppliers and subcontractors at every tier.
- d. Raytheon's suppliers and subcontractors are required to flow DFARS 252.225-7009 down to their suppliers and subcontractors with instructions that they must flow the clause down to their suppliers and subcontractors, to the extent necessary to ensure the end product delivered to DoD meets the requirements of the clause.
- e. The clause defines "alloy," "assembly," "commercial derivative military article," "commercially available off-the-shelf item," "component," "electronic component," "end item," "produce," "qualifying country," "required form," "specialty metal," "steel," and "subsystem."

E. COMPARISON OF OLD, INTERIM, AND NEW LAW CONTRACT CLAUSES

- 1. Consistent with the terms of the Old Law, Interim Law, and New Law, the implementing contract clauses all use the same definition of specialty metals, although the latest clause provides some additional clarifying definitions regarding "alloys" and "steel."
- 2. All of the contract clauses require that specialty metals incorporated in articles delivered under the contract be compliant, i.e., melted in the U.S. or its outlying areas.
- 3. All of the contract clauses include some form of a qualifying country exception.
- 4. The Alt. I versions of the contract clauses all include the same flow down requirements; flow down of the new contract clause at DFARS 252.225-7009 is also required to the extent necessary to ensure the end product delivered to DoD is compliant.
- 5. Conditional acceptance of non-compliant items, with withholds, is permissible under Old Law contracts, but not under Interim Law or New Law contracts.
- 6. The Interim Law version of the Alt. I clause that is applicable to contracts awarded from November 16, 2006 through October 25, 2007 provides an exception for certain commercially available electronic components, whereas the Old Law version of Alt. I does not.

Under the New Law version of the Alt. I clause that is applicable to contracts awarded from January 29, 2008 to July 28, 2009, and the new DFARS 252.225-7009 clause that is applicable to contracts awarded on or after July 29, 2009, all electronic components are excepted from the specialty metals source restrictions unless DoD determines that domestic availability of a particular electronic component is critical to national security.

7. The Interim Law version of the Alt. I clause that is applicable to contracts awarded from October 26, 2007 through January 28, 2008 provides exceptions (i) for certain commercially available electronic components and (ii) COTS items, whereas the Old Law version of Alt. I does not.

Under the New Law version of the Alt. I clause that is applicable to contracts awarded from January 29, 2008 to July 28, 2009, and the new DFARS 252.225-7009 clause that is applicable to contracts awarded on or after July 29, 2009, all electronic components are excepted, as just explained, as are certain COTS items.

8. There is no definition of “component” under the Old Law version of Alt. I, but DoD has provided a definition of “component” under the New Law version of Alt. I and the new DFARS 252.225-7009 clause –

Any item supplied to the Government as part of an end item or another component.³

³ For those contracts that contain either of the two Interim Law versions of the Alt. I clause, the definition of “component” is –

Those first-tier parts and assemblies that are incorporated directly in the end product (i.e., first tier components); and parts and assemblies that are incorporated directly in a first-tier component (i.e., second-tier components).

Third-tier and below parts and assemblies that Raytheon provides directly to DoD are not components and are, therefore, subject only to the basic (DEVIATION) clause.

Note: While, under the Interim Law versions of the Alt I clause, third-tier and below parts and assemblies provided by a prime contractor directly to DoD are not subject to the Alt. I requirements, third-tier and below parts and assemblies *that suppliers provide to Raytheon* for incorporation into an end item or component in the six categories (aircraft, missile and space systems, ships, tank and automotive items, weapons, and ammunition) *are components and are, therefore, subject to the Alt. I (DEVIATION) or the Alt. I (DEVIATION 2007-00011) clause.*

III. EXCEPTIONS TO SPECIALTY METALS RESTRICTIONS

A. SUMMARY OF EXCEPTIONS AVAILABLE TO SUPPLIERS

The available exceptions differ depending upon the date the DoD prime contract was awarded.

1. For Old Law DoD prime contracts awarded *prior to November 16, 2006*, the exceptions available to suppliers are –
 - a. Qualifying countries exception.
 - b. Domestic Non-Availability Determination (DNAD).
 - c. One-time waiver.
2. For Interim Law DoD prime contracts awarded *from November 16, 2006 through October 25, 2007*, the exceptions available to suppliers are –
 - a. Qualifying countries exception.
 - b. DNAD.
 - c. Commercially available electronic components with specialty metals of de minimis value.
 - d. One-time waiver.
3. For Interim Law DoD prime contracts awarded *from October 26, 2007 through January 28, 2008*, the exceptions available to suppliers are –
 - a. Qualifying countries exception.
 - b. DNAD.
 - c. Commercially available electronic components with specialty metals of de minimis value.
 - d. COTS items.
 - e. One-time waiver.
4. For New Law DoD prime contracts awarded *on and after January 29, 2008*, the exceptions available to suppliers are –
 - a. Qualifying countries exception.
 - b. DNAD (subject to review and amendment).
 - c. Electronic components.
 - d. COTS items (with certain exclusions).
 - e. Commercially available fasteners not incorporated into a COTS item (subject to the requirement that the manufacturer of the fastener certify that it will purchase, during the relevant calendar year, at least 50% of the specialty metals required to make such fasteners from domestic sources – *see III.G.5.d. below*)
 - f. One-time waiver.
 - g. Purchases of specialty metals below minimum threshold.

- h. Commercial derivative military articles.
 - i. National security waiver.
 - j. *De minimis* exception (2% by weight), if flowed down.
5. Any supplier or subcontractor that believes its products are covered by any of the available exceptions must provide Raytheon with information sufficient to demonstrate that its products are eligible for the exception.

B. QUALIFYING COUNTRIES EXCEPTION

- 1. Applicable to Old Law, Interim Law, and New Law contracts.
- 2. Under the Old Law and Interim Law contracts, specialty metals melted in a qualifying country are excepted from the specialty metals source restrictions.
- 3. Under New Law contracts, specialty metals melted in a qualifying country are excepted from the specialty metals source restriction if they are incorporated into end items or components. However, DoD may not acquire specialty metal as an end product (e.g., raw stock, including bar, billet, slab, wire, plate, sheet; castings; or forgings), either directly or through a contractor, unless the specialty metal is melted or produced in the United States.
- 4. Under Old Law, Interim Law, and New Law contracts, end items and components manufactured in a qualifying country are excepted from the specialty metals source restrictions.
- 4. Qualifying countries are listed in DFARS 225.872-1.
- 5. The U.S. is not a qualifying country.

C. DNAD FOR POPULATED CIRCUIT CARD ASSEMBLIES

- 1. Applicable to Old Law and Interim Law contracts.
- 2. This DNAD is not needed for New Law contracts as all electronic components are now excepted from the specialty metals restrictions unless DoD determines that the domestic availability of a particular electronic component is critical to national security.
- 3. Issued on January 4, 2007.
- 4. Is broadly worded to cover non-compliant specialty metals in CCAs, i.e., is not limited to “lids and leads” and covers parts acquired by Raytheon

that will eventually be installed on a CCA prior to delivery to DoD, including –

- a. Integrated circuits.
 - b. Resistors.
 - c. Capacitors.
 - d. Transistors.
 - e. Connectors.
5. The CCA DNAD might also extend to items that typically – but not actually – populate a CCA.
 6. Applies DoD-wide to all DoD contracts awarded before July 26, 2008 (but, as noted above, is not necessary for New Law contracts awarded on or after January 29, 2008).
 7. Under this DNAD, DoD contracting officers may procure end items, and components thereof, containing CCAs without regard to the country where the specialty metals in the CCAs were melted or produced.
 8. The CCA DNAD expired for use on new contracts on July 26, 2008, 180 days after enactment of the New Law. Thus, the CCA DNAD is not available on contracts awarded on or after July 26, 2008. As noted above, however, the CCA DNAD is not needed under New Law contracts awarded on or after January 29, 2008, because the New Law provides a broad exception for all electronic components. Thus, the expiration of the CCA DNAD should not affect compliance under New Law contracts.
 9. Contracts open or awarded while this DNAD was in effect retain their coverage even though the DNAD has now expired for use on new contracts.

D. DNAD FOR FASTENERS

1. Applicable to Old Law, Interim Law, and New Law contracts awarded before July 26, 2008.
2. Issued on April 10, 2007.
3. “Fasteners,” as used in the Fastener DNAD, means –
 - a. All items in Federal Stock Classes 5303, 5306, 5307, 5310, 5320, and 5325, or in North American Industry Classification System 2002 code 332722.
 - b. Excludes cotter pins, dowel pins, hose clamps, spring pins and turnbuckles.

4. Applies DoD-wide to all existing DoD prime contracts and to future DoD prime contracts awarded before July 26, 2008.
5. Under this DNAD, DoD contracting officers may procure end items, and components thereof, containing the above fasteners without regard to the country where the specialty metals in such fasteners were melted or produced.
6. The Fastener DNAD expired for use on new contracts on July 26, 2008, 180 days after enactment of the New Law. Thus, the Fastener DNAD is not available on contracts awarded on or after July 26, 2008.
- 7.. Contracts open or awarded while this DNAD was in effect will retain their coverage even though the DNAD has now expired for use on new contracts.
8. If the facts warrant, new DNADs may be made for fasteners under procedures established by the New Law, but all suppliers and subcontractors must nevertheless strive to achieve compliance as quickly as possible.

E. DNAD FOR DUAL USE NEEDLE BEARINGS

1. Applicable to Old Law, Interim Law, and New Law contracts awarded before July 26, 2008.
2. Issued on June 7, 2007.
3. “Dual use needle bearings,” as defined in the DNAD, means –
 - a. Parts in Federal Stock Classes 3110, 3120 and 3130 and under North American Industry Classification System code 332991.
 - b. Excludes ball bearings, bushing sleeves, bearing sleeves, rod ends, mounted bearings, and bearings built-to-print for military-specific applications.
4. Applies DoD-wide to all existing DoD prime contracts and to future DoD prime contracts awarded before July 26, 2008.
5. Under this DNAD, DoD contracting officers may procure end items, and components thereof, containing the above needle bearings without regard to the country where the specialty metals in such needle bearings were melted or produced.
6. The Dual Use Needle Bearings DNAD expired for use on new contracts on July 26, 2008, 180 days after enactment of the New Law. Thus, the

Dual Use Needle Bearings DNAD is not available on contracts awarded on or after July 26, 2008.

7. Contracts open or awarded while this DNAD was in effect will retain their coverage even though the DNAD has now expired for use on new contracts.
8. If the facts warrant, new DNADs may be made for needle bearings under procedures established by the New Law, but all suppliers and subcontractors must nevertheless strive to achieve compliance as quickly as possible.

F. COMMERCIALY AVAILABLE ELECTRONIC COMPONENTS WITH SPECIALTY METALS OF DE MINIMIS VALUE

1. Applicable only to Interim Law contracts.
2. Under the Alt. I (DEVIATION) and Alt. I (DEVIATION 2007-O0011) clauses (applicable to DoD prime contracts awarded from November 16, 2006 through January 28, 2008), the specialty metals source restrictions do not apply to specialty metals incorporated in a commercially available electronic component if the value of the specialty metal content does not exceed 10% of the overall value of the lowest level electronic component.
3. Commercially available means –
 - a. COTS electronic components.
 - b. For non-COTS items, “commercial item” as defined in the FAR.
4. Electronic component means – An item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.
5. De minimis value means –
 - a. The value of the specialty metal content in the electronic component does not exceed 10% of the overall value of the lowest level electronic component containing specialty metal.
 - b. The value of the specialty metal content is the cost of the specialty metal in its raw material form.
 - c. Overall value is either (i) the purchase price for parts that Raytheon purchases from a supplier or (ii) the sale price for parts that Raytheon supplies to a higher tier contractor.

- d. It is not necessary to know the exact value of the specialty metal content, only to reasonably estimate that it is 10% or less of the overall value.
6. Under the New Law, *all electronic components are excepted* from the specialty metals source restrictions, unless the Secretary of Defense determines that the domestic availability of a particular electronic component is critical to national security.

G. COMMERCIALY AVAILABLE OFF-THE-SHELF (COTS) ITEMS

1. Applicable to Interim Law contracts (awarded on or after October 26, 2007) and New Law contracts.
2. COTS item means any item of supply, including any component, that is –
 - a. A commercial item as defined in FAR 2.101;
 - b. Sold in substantial quantities in the commercial marketplace; and
 - c. Offered to the Government without modification, in the same form in which it is sold in the commercial marketplace.
3. Under the Alt. I (DEVIATION 2007-O0011) clause (applicable to DoD prime contracts awarded from October 26, 2007 through January 28, 2008), the specialty metals source restrictions do not apply to COTS items.
4. Contracting officers are permitted to apply the new DFARS provisions regarding COTS to existing DoD prime contracts, whenever they were awarded, with appropriate consideration.
5. Under the New Law (applicable to DoD prime contracts awarded on and after January 29, 2008), COTS items are excepted from the specialty metals source restrictions, *except for* contracts or subcontracts for –
 - a. The acquisition of specialty metals, including mill products, such as bar, billet, slab, plate and sheet that have not been incorporated into end items, subsystems, assemblies or components;
 - b. The acquisition of forgings or castings of specialty metals, unless such forgings or castings are incorporated into COTS end items, subsystems, or assemblies;
 - c. Commercially available high performance magnets unless they are incorporated into COTS end items or subsystems; and

- d. COTS fasteners unless they are (i) incorporated into COTS end items, subsystems, assemblies, or components, or (ii) commercial items purchased from a manufacturer that has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of such fasteners for sale to DoD and other customers, that is not less than 50% of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners.

H. ONE-TIME WAIVER

1. Applicable to Old Law, Interim Law, and New Law contracts.
2. Established by the Interim Law, the one-time waiver (OTW) allows DoD to accept non-compliant items that were produced, manufactured, or assembled in the U.S. before October 17, 2006, where final acceptance occurs after that date, provided that the contracting officer determines in writing that –
 - a. Removal or replacement of the non-compliant specialty metals in such items or the substitution of non-compliant items with compliant items is impractical or uneconomical.
 - b. The prime and subcontractor responsible for the non-compliance have effective corrective action plans to ensure compliance of items produced, manufactured, or assembled in the U.S. after October 17, 2006.
 - c. The non-compliance is not knowing or willful.
3. In July 2007, DCMA approved Raytheon's specialty metals Corrective Action Plan and granted the OTW permitting Raytheon to use non-compliant parts and materials that were produced, manufactured, or assembled in the U.S. prior to October 17, 2006.
4. All parts covered by the OTW must be compliant by September 29, 2010.

I. PURCHASES OF SPECIALTY METALS BELOW MINIMUM THRESHOLD

1. Applicable only to New Law contracts.
2. DoD may accept delivery of an item containing non-compliant specialty metals if the total amount of non-compliant specialty metals in the item does not exceed 2% of the total weight of specialty metal in the item.
3. This exception does not apply to high performance magnets.

4. This exception is applied at the prime contract level and should be relied upon only in situations in which none of the other available exceptions applies.

J. COMMERCIAL DERIVATIVE MILITARY ARTICLES

1. Applicable only to New Law contracts.
2. “Commercial derivative military article” is an item procured by DoD that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than government purposes.
3. Commercial derivative military articles are excepted from the specialty metals restrictions if the prime contractor certifies that it and its subcontractors have entered into a contractual agreement or agreements to purchase an amount of domestically melted specialty metal in the required form, for use during the period of contract performance in the production of a commercial derivative military article and the related commercial article, that is not less than the greater of –
 - a. An amount equivalent to 120% of the amount of specialty metal that is required to produce the commercial derivative military article (including work performed under each subcontract); or
 - b. An amount equivalent to 50% of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period to produce the commercial derivative military article and the related commercial article.
4. For New Law contracts awarded on or after July 29, 2009, the commercial derivative military article exception is implemented through a certification requirement in a DoD solicitation. The certification is found at DFARS 252.225-7010.
 - a. In its DFARS 252.225-7010 certification included in its proposal, the offeror must identify any commercial derivative military articles it intends to deliver under the contract resulting from the solicitation.
 - b. The offeror’s designation of an item as a “commercial derivative military article” is subject to DoD review and approval.
 - c. The offeror must further certify that, if it is awarded a contract and if DoD approves the offeror’s designation of the listed item or

items as commercial derivative military articles, the offeror and its subcontractors will demonstrate compliance with the requirements for invoking the commercial derivative military article exception listed in III.J.3 above.

K. NATIONAL SECURITY WAIVER

1. Applicable only to New Law contracts.
2. Applicable only to non-compliance discovered after contract award.
3. DoD may accept delivery of an end item containing non-compliant materials if the Secretary determines in writing that acceptance of such item is necessary to U.S. national security.
4. If the Secretary determines that the non-compliance was not knowing or willful, the contractor or subcontractor must develop and implement a plan to ensure future compliance.
5. If the Secretary determines that the non-compliance was knowing or willful, the Secretary will –
 - a. Require the development and implementation of a plan to ensure future compliance; and
 - b. Consider suspending or debarring the contractor or subcontractor.