

**Subtitle D—United States Defense
Industrial Base Provisions**

**SEC. 842. PROTECTION OF STRATEGIC MATERIALS CRITICAL TO
NATIONAL SECURITY.**

(a) **REQUIREMENT TO BUY FROM AMERICAN SOURCES.—**

(1) **IN GENERAL.—**Subchapter V of chapter 148 of title 10, United States Code, is amended by inserting after section 2533a the following new section:

**“§ 2533b. Requirement to buy strategic materials critical to
national security from American sources; excep-
tions**

“(a) REQUIREMENT.—Except as provided in subsections (b) through (j), funds appropriated or otherwise available to the Department of Defense may not be used for procurement of—

“(1) the following types of end items, or components thereof, containing a specialty metal not melted or produced in the United States: aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition; or

“(2) a specialty metal that is not melted or produced in the United States and that is to be purchased directly by the Department of Defense or a prime contractor of the Department.

“(b) AVAILABILITY EXCEPTION.—(1) Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed. For purposes of the preceding sentence, the term ‘compliant specialty metal’ means specialty metal melted or produced in the United States.

“(2) This subsection applies to prime contracts and subcontracts at any tier under such contracts.

“(c) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

“(1) Procurements outside the United States in support of combat operations or in support of contingency operations.

“(2) Procurements for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

“(d) EXCEPTION RELATING TO AGREEMENTS WITH FOREIGN GOVERNMENTS.—Subsection (a)(1) does not preclude the procurement of a specialty metal if—

“(1) the procurement is necessary—

“(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

“(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

“(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

“(e) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, and nonappropriated fund instrumentalities operated by the Department of Defense.

“(f) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to procurements in amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

“(g) EXCEPTION FOR PURCHASES OF ELECTRONIC COMPONENTS.—Subsection (a) does not apply to procurements of commercially available electronic components whose specialty metal content is

de minimis in value compared to the overall value of the lowest level electronic component produced that contains such specialty metal.

“(h) **APPLICABILITY TO PROCUREMENTS OF COMMERCIAL ITEMS.**—This section applies to procurements of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

“(i) **SPECIALTY METAL DEFINED.**—In this section, the term ‘specialty metal’ means any of the following:

“(1) **Steel**—

“(A) with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

“(B) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

“(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

“(3) Titanium and titanium alloys.

“(4) Zirconium and zirconium base alloys.

“(j) **ADDITIONAL DEFINITIONS.**—In this section:

“(1) The term ‘United States’ includes possessions of the United States.

“(2) The term ‘component’ has the meaning provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).”

(2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“2533b. Requirement to buy strategic materials critical to national security from American sources; exceptions.”.

(3) **CONFORMING AMENDMENTS.**—Section 2533a of title 10, United States Code, is amended—

(A) by striking paragraph (2) of subsection (b) and redesignating paragraph (3) of such subsection as paragraph (2);

(B) in subsection (c), by striking “or specialty metals (including stainless steel flatware)”; and

(C) in subsection (e)—

(i) by striking “SPECIALTY METALS AND” in the heading; and

(ii) by striking “specialty metals or”.

(4) **EFFECTIVE DATES.**—

(A) Section 2533b of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts entered into after the date occurring 30 days after the date of the enactment of this Act.

(B) The amendments made by paragraph (3) shall take effect on the date occurring 30 days after the date of the enactment of this Act.

(b) **ONE-TIME WAIVER OF SPECIALTY METALS DOMESTIC SOURCE REQUIREMENT.**—

(1) **AUTHORITY.**—The Secretary of Defense or the Secretary of a military department may accept specialty metals if such

metals were incorporated into items produced, manufactured, or assembled in the United States before the date of the enactment of this Act with respect to which the contracting officer for the contract determines that the contractor is not in compliance with section 2533b of title 10, United States Code (as added by subsection (a)(1)), if—

(A) the contracting officer for the contract determines in writing that—

(i) it would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

(ii) the prime contractor and subcontractor responsible for providing items containing non-compliant materials have in place an effective plan to ensure compliance with section 2533b of title 10, United States Code (as so added), with regard to items containing specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States after the date of the enactment of this Act; and

(iii) the non-compliance is not knowing or willful; and

(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics or the service acquisition executive of the military department concerned approves the determination.

Deadline.
Website.

(2) NOTICE.—Not later than 15 days after a contracting officer makes a determination under paragraph (1)(A) with respect to a contract, the contracting officer shall post a notice on FedBizOpps.gov that a waiver has been granted for the contract under this subsection.

(3) DEFINITION.—In this subsection, the term “FedBizOpps.gov” means the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

(4) TERMINATION OF AUTHORITY.—A contracting officer may exercise the authority under this subsection only with respect to the delivery of items the final acceptance of which takes place after the date of the enactment of this Act and before September 30, 2010.