

RAYTHEON COMPANY

DEPARTMENT OF DEFENSE SPECIALTY METALS SOURCE RESTRICTIONS INFORMATION FOR SUPPLIERS AND SUBCONTRACTORS AS OF DECEMBER, 2007

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 (i) basic information about the DoD specialty metals source requirements.
- 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 requirements.

I. CURRENT SPECIALTY METALS REQUIREMENTS

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. The Old Law applies to all DoD prime contracts entered into *prior to November 16, 2006*.

B. NEW LAW. New legislation enacted in 2006 removed specialty metals from the Old Law and established a new section in U.S. Code, 10 U.S.C. § 2533b, specifically for specialty metals. Like the Old Law, the New Law requires DOD to buy items containing specialty metals only from U.S. or qualifying country sources. The New Law applies to all DoD prime contracts entered into *after November 15, 2006*.

C. CONTRACT CLAUSES AND NOVEMBER 8, 2007 DFARS AMENDMENTS

The statutory specialty metals requirements are currently implemented by three sets of DFARS contract clauses – one set for the Old Law and two sets for the New Law – and 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 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 – DFARS 252.225-7014, Alt. I (*applicable to DoD prime contracts entered into before 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.
2. New Law – DFARS 252.225-7014, Alt. I (DEVIATION) (*applicable to contracts entered into after November 15, 2006 and before October 26, 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. New Law – DFARS 252.225-7014, Alt. I (DEVIATION 2007-O0011) (*applicable to contracts entered into after 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;
 - 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.
 - 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 metals," and "commercially available off-the-shelf item."
4. DFARS Amendments, published November 8, 2007 at 72 Fed. Reg. 63113-63123 (*applicable to contracts entered into after October 25, 2007*).

- 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. 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.

D. COMPARISON OF OLD LAW AND NEW LAW REQUIREMENTS

1. Both the New Law and the Old Law, and all three sets of the implementing contract clauses, use the same definition of specialty metals.
2. All three sets of 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 three sets of contract clauses include a qualifying country exception.
4. The Alt. I version of all three sets of contract clauses include the same flow down requirements.
5. Conditional acceptance of non-compliant items, with withholds, is permissible under the Old Law, but not under the New Law.
6. The New Law version of the Alt. I clause that is applicable to contracts entered into after November 15, 2006 and before October 26, 2007 provides an exception for certain commercially available electronic components, whereas the Old Law version of Alt. I does not.
7. The New Law version of the Alt. I clause that is applicable to contracts entered into after October 25, 2007 provides exceptions (i) for certain commercially available electronic components and (ii) COTS items, whereas the Old Law version of Alt. I does not.
8. There is no definition of “component” under the Old Law, but DoD has provided a definition of “component” under the New Law –

- a. 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).
- b. 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.
- c. Note: While 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.*

II. EXCEPTIONS TO SPECIALTY METALS REQUIREMENTS

A. SUMMARY OF EXCEPTIONS CURRENTLY AVAILABLE TO SUPPLIERS

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

1. For Old Law DoD contracts entered into *before 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 New Law DoD contracts entered into *after November 15, 2006 and before October 26, 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 New Law DoD contracts entered into *after 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. COTS items
- e. One-time waiver

4. Any supplier or subcontractor that believes that its products are covered by any of the currently available exceptions must provide Raytheon with information sufficient to demonstrate that its products are eligible for the exception.

B. QUALIFYING COUNTRIES EXCEPTION (applicable to both Old Law and New Law contracts)

- 1. Specialty metals melted in a qualifying country are excepted.
- 2. End items and components manufactured in a qualifying country are excepted.
- 3. Qualifying countries are listed in DFARS 225.872-1.
- 4. The U.S. is not a qualifying country.

C. DNAD FOR POPULATED CIRCUIT CARD ASSEMBLIES (applicable to both Old Law and New Law contracts)

- 1. Issued on January 4, 2007.
- 2. Applies DOD-wide to all existing and future DOD contracts.
- 3. Is of indefinite duration – no set expiration date.
- 4. DNAD remains effective until DOD determines that compliant CCAs are available.
- 5. 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

The CCA DNAD might also extend to items that typically – but not actually – populate a CCA.

6. DoD contracting officers may procure end items, and components thereof, containing CCAs without regard to the country where the specialty metals were melted or produced.
7. Notwithstanding this DNAD, all suppliers and subcontractors must strive to achieve compliance as quickly as possible.

D. DNAD FOR FASTENERS (applicable to both Old Law and New Law contracts)

1. Issued on April 10, 2007.
2. Applies DOD-wide to all existing and future DOD contracts.
3. Is of indefinite duration – no set expiration date.
4. This DNAD remains effective until DOD determines that compliant fasteners are available.
5. Fasteners 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.
6. DoD contracting officers may procure end items, and components thereof, containing CCAs without regard to the country where the specialty metals were melted or produced.
7. Notwithstanding this DNAD, all suppliers and subcontractors must strive to achieve compliance as quickly as possible.

E. DNAD FOR DUAL USE NEEDLE BEARINGS (applicable to both Old Law and New Law contracts)

1. Issued on June 7, 2007.
2. Applies DOD-wide to all existing and future DOD contracts.
3. Is of indefinite duration – no set expiration date.
4. The DNAD remains effective until DOD determines that compliant dual use needle bearings are available.
5. Dual use needle bearings 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.
- 6. DoD contracting officers may procure end items, and components thereof, containing dual use needle bearings without regard to the country where the specialty metals were melted or produced.
 - 7. Notwithstanding this DNAD, all suppliers and subcontractors must strive to achieve compliance as quickly as possible.

F. COMMERCIALLY AVAILABLE ELECTRONIC COMPONENTS WITH SPECIALTY METALS OF DE MINIMIS VALUE (applicable only to New Law contracts)

- 1. Under the Alt. I (DEVIATION) and Alt. I (DEVIATION 2007-00011) clauses (applicable to contracts entered into after November 15, 2006), the DoD source requirements 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.
- 2. Commercially available means –
 - a. Commercial off the shelf (COTS) electronic components.
 - b. For non-COTS items, “commercial item” as defined in the FAR.
- 3. Electronic component means –
 - a. An item operated by controlling 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.
- 4. 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.

G. COMMERCIALLY AVAILABLE OFF-THE-SHELF (“COTS”) ITEMS

- 1. Commercially available off-the-shelf 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.
- 2. Under the Alt. I (DEVIATION 2007-O0011) clause (applicable to contracts entered into after October 25, 2007), the DoD source requirements do not apply to COTS items.
- 3. Contracting officers are permitted to apply the new DFARS provisions regarding COTS to existing contracts, whenever they were entered into, with appropriate consideration.

H. ONE-TIME WAIVER (applicable to both Old Law and New Law contracts)

- 1. Established by the New 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 correction 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.

2. 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.
3. All parts covered by the OTW must be compliant by September 29, 2010.
4. It is critical that Raytheon's suppliers and subcontractors become compliant before the supply of non-compliant parts and materials is exhausted.