



REQUIRE THE FEDERAL GOVERNMENT TO BUY AMERICAN MORE OFTEN

The Berry Amendment Strengthens our Economy and National Security

ISSUE:

It is vital to America's national security that the U.S. military maintain the ability to source high-quality, innovative textile materials, apparel, and personal equipment from a vibrant U.S. textile industrial base. Key to this goal is defending and strengthening the Berry Amendment ([10 USC 2533a](#)), a law requiring the Department of Defense (DOD) to buy textile and clothing products made with virtually 100 percent U.S. content and labor.

The U.S. textile industry provides high-tech and functional components for the U.S. government, including more than \$1.8 billion worth of vital uniforms and equipment for our armed forces each year. The Department of Defense estimates that over 8,000 different textile items are purchased for use by the U.S. military, and this figure rises to more than 30,000-line items when individual sizes are considered. As domestic suppliers, U.S. textile mills provide the highest quality goods on a timetable that our armed forces demand.

The Simplified Acquisition Threshold

All military orders at or above the Simplified Acquisition Threshold (SAT) are subject to the Berry Amendment and must be sourced wholly in the United States. The FY 2018 National Defense Authorization Act (NDAA) raised the SAT from \$150,000 to \$250,000, affecting approximately \$50 million worth of textile and apparel orders annually. Even a seemingly small SAT increase like this ensures that a significant amount of U.S. defense spending will now flow to non-market economies like China at the expense of American jobs.

As such, we support a de-coupling of the Berry Amendment from the SAT and reversion of the threshold level for Berry purchases back to the FY 2017 level of \$150,000. From that point, future Berry threshold increases would be chained to potential increases to the Consumer Price Index (CPI).

Domestic Non-Availability Determination (DNAD)

Under Berry, a domestic non-availability determination may be granted if DoD determines that an input or item in question cannot be acquired when needed in a satisfactory quality and enough quantity at U.S. market prices. Products that are granted a DNAD waiver can be sourced offshore and used as inputs in items that continue to qualify as Berry compliant. The domestic textile industry has long been concerned that the DNAD process is plagued with a lack of transparency. This lack of transparency has led to concerns as to possible overuse of the DNAD process. This is the case despite language in the legislative history of the Berry Amendment indicating that Congress intended for Defense agencies to exercise extreme caution in granting such waivers.

Section 809 Advisory Panel

The Section 809 Advisory Panel on streamlining and codifying defense acquisition procedures has made various recommendations that impact the operational nature of the Berry Amendment. USIFI and NFI strongly oppose two proposals from the 809 Panel's most recent Volume III report.

- Recommendation 35 would transition current DOD nomenclature from the language of “commercial” and “commercially available off-the-shelf” to “readily available” and “readily available with customization.” The report also suggests that certain acquisition laws should not apply to “readily available” and “readily available with customization” items. Regardless of the nomenclature, waiving Berry requirements for commercially or readily available products would severely weaken the Berry Amendment. Doing so would place widespread discretion in the hands of prime contractors to the direct detriment of U.S. manufacturers and workers.
- Recommendation 64 would modify the Berry Amendment by allowing the inclusion of foreign material in Berry-covered products, using an exception language contained in the Buy American Act. This recommendation will add unnecessary and harmful complexity to the military textile procurement structure. Further, it would substantially weaken the domestic textile industrial base by allowing routine outsourcing of inputs available from U.S. suppliers.

ACTION REQUESTS:

To create more jobs and strengthen America’s national security, USIFI and NFI request the following actions with respect to the FY 2020 NDAA:

- De-couple the Berry Amendment from the SAT and bring future increases in line with CPI
- Direct the DoD to provide greater transparency as to the number of DNAD waivers in existence under Berry and how the determination process currently operates
- Oppose excluding commercially available or readily available products from Berry Amendment coverage
- Oppose adoption of existing Buy American language that would allow for the sourcing of foreign inputs under Berry contracts