

THE SECRETARY OF DEFENSE
WASHINGTON D C 20301

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MEMORANDUM FOR Secretaries of the Military Departments
Directors of the Defense Agencies

SUBJECT: Section 724 of the Department of Defense Appropriation
Act, FY 1973

There has been included in section 724 of the Fiscal Year 1973 Department of Defense Appropriation Act (P. L. 92-570) a restriction on the procurement, using funds appropriated by that Act, of articles containing "specialty metals" not melted in domestic manufacturing facilities except "to the extent that the Secretary of the Department concerned shall determine that a satisfactory quality and sufficient quantity" of any articles containing specialty metals domestically melted "cannot be procured as and when needed at United States market prices". Other more limited exceptions are also made applicable to this restriction.

Although section 724 does not specifically define the term "specialty metals", the meaning intended by the Congress is made clear in the pertinent report of the House Committee on Appropriations. The term is defined to include four categories, as follows:

1. Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicone, 0.60 percent; or copper, 0.60 percent; or which contains 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.

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3. Titanium and titanium alloys.
4. Zirconium and zirconium base alloys.

The bulk of these specialty metals which are used in one form or another in myriad items purchased by the Department of Defense are actually procured at the subcontract level - often many subcontract tiers removed from the prime contract - so as to make impracticable any precise evaluation of all such purchases, even at enormous expense in both money and time.

It is apparent, from the legislative history of this provision, that it was not intended that this Department achieve or attempt to achieve the impossible in its implementation. Rather, it is clear that its purpose is to afford reasonable protection to the specialty metals industry to help preserve our domestic production capacity to satisfy mobilization requirements, without forcing a massive disruption of our existing procurement methods and programs. An accommodation is therefore needed to give maximum effect to this new requirement without losing sight of other Congressional objectives that the Department of Defense function in an efficient and economical manner in meeting its mission.

It is estimated that the great bulk of the specialty metals identified in the House Appropriations Committee Report and procured by and for this Department (in excess of 85%) fall within six major classes of programs, i. e., aircraft, missiles, ships, tank-automotive, weapons and ammunition. To attempt to identify and control the use of such metals for the remaining small quantities involved in other innumerable and varied contracts and purchases would not achieve any real beneficial result sufficient to justify the effort and cost involved. Therefore, the restriction on the procurement of specialty metals contained in section 724 of the Fiscal Year 1973 Department of Defense Appropriations Act will be applied only as follows:

1. To prime contracts over \$2500 and to all subcontract tiers within the above six major program classes.
2. To other prime contracts over \$2500 where the "specialty metal" is purchased directly by the government or the prime contractor. It is my determination that to apply the restriction in such other contracts to lower subcontract levels would preclude obtaining requirements of a satisfactory quality and in sufficient quantity as and when needed.

In applying the section 724 restriction it is vital that our programs not be unduly delayed or disrupted. Congress clearly recognized this in providing, as noted above, that this restriction was not to be applied when to do so would preclude the procurement of a "satisfactory quality and sufficient quantity" of the required articles "as and when needed". In addition to the determinations made herein the Secretaries of the military departments and the Directors of Defense Agencies, or their authorized designees, are hereby authorized to determine, in appropriate cases, that this or other exceptions provided in section 724 are applicable, and that the restriction need not be applied to specific procurements of end items.

As noted above, this restriction will not be applied to purchases under \$2500. To do so would result in a massive and costly administrative burden, essentially impossible of real accomplishment, with apparently no more than a de minimis benefit to the industry. Such a result could not have been intended by the Congress. However, caution must be exercised to assure that requirements are not divided into smaller quantities for the purpose of avoiding the restriction.

The ASD(I&L) will issue necessary regulations and instructions in accordance with the above.

A handwritten signature in dark ink, appearing to read "William F. Friedman", is written in a cursive style. The signature is positioned to the right of the text block above it.