



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

13 JUN 2001

**Class Determination of Domestic Non-Availability for
Defense Supply Center Philadelphia
Medical/Surgical Prime Vendor Programs**

Pursuant to the authority contained in section 9005 of Public Law 102-396, as amended, 10 U.S.C. 2241 note (the "Berry Amendment"), I hereby make the following findings and determination concerning the Defense Supply Center Philadelphia Medical/Surgical Prime Vendor Programs.

Findings

1. The Department of Defense (DoD) Military Healthcare System must provide healthcare to members of the U.S. Armed Forces, retirees, and their families of a comparable quality to that available to civilians. The Defense Supply Center Philadelphia (DSCP), of the Defense Logistics Agency (DLA), is responsible for purchasing commercial medical and surgical products for the Military Healthcare System in peacetime and in war or emergencies.
2. DSCP uses prime vendor contractors to provide worldwide support to medical treatment facilities, non-DoD facilities, readiness, deploying troops, disaster relief and humanitarian missions. This guarantees professional DoD healthcare providers access to commercial medical and surgical products by taking full advantage of the commercial U.S. health care industry. Developed in response to recommendations from the U.S. Senate and the General Accounting Office, the Medical/Surgical Prime Vendor (Med/Surg PV) Programs have resulted in product cost savings, reduced personnel, and reduced inventory at the ordering point over other medical and surgical acquisition methods.
3. Many commercial items purchased from the prime vendors, such as bandages, gauze, sponges, cotton pellets, filters, polishing pads for lenses, and medical clothing, are made of textile fibers and related fabric subject to the Berry Amendment's domestic source and content requirements. The Berry Amendment requires affected items to be domestic (i.e., of domestic origin and wholly of domestic content) unless a determination is made that such product cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices.
4. In the past, DSCP market experience and research has shown that a preponderance of the medical-surgical industry does not trace the origin of items or their content. Military Healthcare System requirements represent only about two percent of total U.S. healthcare market sales. DoD thus has little leverage to compel suppliers to change their customary commercial practices to conform to the requirements of the Berry Amendment.



5. As of May 2001, DSCP's initial review concluded that about 10% of the medical and surgical items in their supplier databases are subject to the Berry Amendment. (A list of affected Federal Supply Classes is at Attachment 1). DSCP cannot immediately determine what suppliers and products comply with the Berry Amendment because the practice of the industry is not to trace the origin of items or their content, and an item-by-item analysis, therefore, is not currently possible. To protect the Military Healthcare System patients and preserve the quality of military healthcare, an interim domestic non-availability determination is necessary.

6. Without a domestic non-availability determination, the Military Healthcare System will be unable to participate in the commercial U.S. healthcare market. This would deny military medical personnel healthcare commensurate with the civilian sector, and would adversely affect surge and sustainment requirements in event of war or emergency. The Military Healthcare System cannot meet its mission requirement to provide high quality patient care to members of the U.S. Armed Forces, retirees, and their families unless it has access to satisfactory quality and sufficient quantity of commercial medical and surgical products as and when needed at U.S. market prices.

7. DSCP is surveying the suppliers to construct a database to reflect the products that comply with the Berry Amendment. Products will be considered domestic products if the supplier specifically identifies the product as domestic and wholly of domestic content. Products will be considered foreign if the supplier 1) is not able to determine whether its product is domestic, 2) indicates its product is foreign, 3) fails to specifically identify its product as domestic, or 4) fails to respond at all to inquiries on this point. DSCP has issued letters to its approved suppliers requesting item and country of origin source and content information. DSCP shall also assess total quantity requirements (peace and war) and assess which items may have functional equivalents available domestically. A Baseline Plan for one of the Medical Surgical Prime Vendor programs addresses this process in detail, and a Maintenance Plan for this program summarizes updating efforts (Attachment 2).

8. During the period of this interim waiver, items may be purchased under the PV Programs pending collection of the data to determine whether that item is available domestically and wholly of domestic content in satisfactory quality and sufficient quantity as and when needed at U.S. market prices. In any instance where at least one domestic item is available of required quantity and quality as and when needed at U.S. market prices, DSCP shall immediately remove all foreign equivalent items from availability, which will prevent purchase of the foreign items through the PV Programs.

9. In accordance with Deputy Secretary of Defense memorandum dated May 1, 2001, on my behalf DLA/DSCP has presented the requiring activities with two alternatives. Both alternatives would involve eliminating certain affected items from the PV programs that,

in turn, would require healthcare professionals to make repeated smaller purchases under the simplified acquisition threshold. The Military Services responded with a certification that the alternatives were unacceptable. They stated the alternatives would require a more costly and less efficient process, disrupt the delivery of healthcare, and degrade military readiness (Attachment 3).

Determination

Subject to the following and in order to protect military healthcare beneficiaries, I hereby determine that satisfactory quality and sufficient quantity of commercial medical and surgical products conforming to the domestic source and content requirements of the Berry Amendment, identified in the list at Attachment 1, cannot be procured as and when needed at U.S. market prices through the existing commercial U.S. healthcare system.

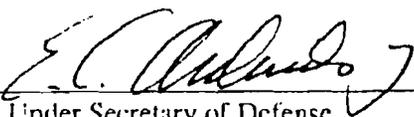
I have directed DLA/DSCP to take the following actions immediately:

- 1) Conduct a complete review to determine what items under its Med/Surg PV programs are subject to the Berry Amendment, and whether the origin of the item and its content is domestic, and if so, whether the item is available in satisfactory quality and sufficient quantity at and when needed at U.S. market prices.
- 2) Complete this review by October 12, 2001 and brief me on the results of the review immediately after its conclusion.
- 3) Delete any foreign item from its databases when a domestic equivalent of satisfactory quality and sufficient quantity is found to be available as and when needed at U.S. market prices.

I will reconsider this interim waiver upon the completion of DSCP's review identified above.

Date

13 June 2001



Under Secretary of Defense
(Acquisition, Technology and Logistics)

Attachments

1. Item List
2. Data Collection Plans
3. Service Comments



ACQUISITION AND
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
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Class Determination of Domestic Non-Availability for Poromeric Material

Pursuant to the authority contained in section 9005 of Public Law 102-396, as amended, 10 U.S.C. 2241 note (the "Berry Amendment"), I hereby make the following findings and determination concerning the procurement of poromeric material.

Findings

1. U.S. Army and U.S. Marine Corps specifications require that certain dress footwear items be manufactured with poromeric material. Poromeric material is a synthetic material used to construct uppers for dress shoes. It is durable, high gloss material that maintains a shiny appearance. The U.S. Army and U.S. Marine Corps consider the poromeric dress shoe as the only dress shoe that meets their requirements for military appearance and low maintenance.
2. The Defense Supply Center Philadelphia (DSCP), an agency of the Defense Logistics Agency (DLA), is the Department's principal buyer of military clothing and textile products.
3. Since 1997 when the use of poromeric material in dress footwear first was approved by the U.S. Army and U.S. Marine Corps, DSCP has conducted numerous unsuccessful market surveys to identify a domestic producer of poromeric material. Most recently, in May 2001, DSCP contacted every known domestic manufacturer of dress footwear in this regard. As with previous market surveys, this research verified that poromeric material is not currently produced in the United States or its possessions. The only known manufacturers of poromeric material are located in Japan and the United Kingdom. Problems obtaining domestic poromeric material have been chronic, and this is not expected to change. Nevertheless, two companies in the United States (Bradford and Majilit) recently have expressed an interest in exploring the possibility of becoming domestic producers of poromeric material; however, they would have to make significant investments in equipment and facilities needed to gain this capability. Neither company has taken such action thus far.
4. DSCP has been working with the U.S. Army and U.S. Marine Corps and industry to find an acceptable domestic substitute for poromeric material. No potential alternative has been identified.



5. It is essential to continue procurement of military dress footwear items that contain poromeric material, due to its unique characteristics, to meet recurring requirements of the U.S. Army and U.S. Marine Corps for new issue and sustainment needs.

Determination

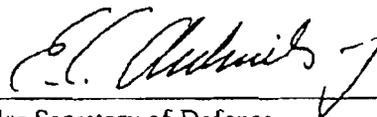
Subject to the following, I hereby determine that satisfactory quality and sufficient quantity of poromeric material conforming to the domestic source and content requirements of the Berry Amendment cannot be procured as and when needed at U.S. market prices. This determination applies to contracts being performed as of January 1, 2002, and thereafter.

I hereby direct DLA/DSCP to take the following actions.

- (1) Continue to periodically conduct market research searching for a producer of poromeric material that can comply with the specification and domestic source requirements of the Berry Amendment.
- (2) Periodically review with each affected Military Department any specification requirement for the use of poromeric material and, if appropriate, test domestically available component materials with the express purpose of determining whether any domestically available component material would suffice in lieu of poromeric material, and changing each specification accordingly.
- (3) Advise me if and when such a domestic producer of poromeric material or a domestically-produced alternative material is identified.

I will reconsider this waiver if and when DLA/DSCP notifies me their efforts identified above are successful.

Date: 1/2/02



Under Secretary of Defense
(Acquisition, Technology and Logistics)



ACQUISITION AND
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3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

Class Determination of Domestic Non-Availability for Rayon Yarn for Military Clothing and Textile Items

Pursuant to the authority contained in section 9005 of Public Law 102-396, as amended, 10 U.S.C. 2241 note (the "Berry Amendment"), I hereby make the following findings and determination concerning the procurement of rayon yarn contained in military clothing and textile items.

Findings

1. Military Department specifications require rayon as a component in a wide range of items such as clothing, individual equipment (e.g., sleeping bags), insignias, flags, and labels. Rayon is a cellulose fiber that possesses a unique combination of characteristics, including durability, dye fastness, breathability, and light weight, that distinguish it from other textile materials. Rayon fiber is spun into yarns of various thicknesses (denier). The different yarns are woven into various fabrics depending upon their intended end use.
2. The Defense Supply Center Philadelphia (DSCP), an agency of the Defense Logistics Agency (DLA), is the Department's principal buyer of military clothing and textile products.
3. Rayon yarn is not currently produced in the United States or its possessions. Problems obtaining domestic rayon yarn first surfaced in 1987. At that time, a determination was made that "Yarn, 50 Denier rayon" is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Section 25.104 of the Federal Acquisition Regulation was annotated accordingly. Since 1987, the absence of domestic production has spread to all deniers of rayon yarn.
4. Since 1995, DSCP has been unable to acquire any items containing domestically produced rayon yarn of satisfactory quality or to find any acceptable domestic substitutes. In 1995, one known domestic manufacturer of rayon yarn, North American Yarn, existed. The quality of the rayon yarn manufactured by North American Yarn was unacceptable. It could not be dyed consistently from lot to lot. The military specifications were relaxed to allow shading inconsistencies, but the quality of the domestic rayon yarn remained so low that the domestic military clothing and textile industry looked for another domestic source of rayon yarn or a domestic substitute for rayon yarn. For fiscal years 1996 through 1998, DSCP made a determination that satisfactory quality and sufficient quantity of rayon yarn conforming to the domestic source and content requirements of the Berry Amendment could not be procured as and when needed at U.S. market prices for a wide variety of military clothing and textile items. DSCP found a German firm, Deutsch Emka, that produces rayon yarn of satisfactory quality and sufficient quantity. For fiscal year 1999 and 2000, DSCP made a similar domestic non-availability determination to allow affected suppliers to use foreign 150 denier rayon yarn to manufacture various military clothing and textile items.



5. DSCP published a sources sought synopsis in the *Commerce Business Daily* on June 22, 2001, seeking domestic sources of rayon yarn, and it sought interest from domestic industry at a Domestic Sourcing Conference held on May 23, 2001. No positive responses were received. In addition, DSCP has been working with domestic military clothing and textile suppliers and the Military Departments for the past two years to develop a suitable domestic substitute for rayon yarn. No acceptable alternative to rayon yarn as a component material of various military clothing and textile items has been found thus far.

6. It is essential to continue procurement of military clothing and textile items that contain rayon yarn, due to its unique characteristics, to meet recurring requirements of the Military Departments for new issue and sustainment needs.

Determination

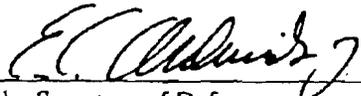
Subject to the following, I hereby determine that satisfactory quality and sufficient quantity of rayon yarn conforming to the domestic source and content requirements of the Berry Amendment cannot be procured as and when needed at U.S. market prices. This determination applies to current and future contracts.

I have directed DLA/DSCP to take the following actions immediately:

- 1) Conduct a review with each affected Military Department of any specification requirement for the use of rayon yarn and, if appropriate, test domestically available component materials with the express purpose of determining whether any domestically available component material (for example, domestically produced acetate yarn) would suffice in lieu of rayon yarn and changing each specification accordingly. In the event any decision is negative, the requiring activity shall specifically certify why in writing, and DLA/DSCP should so indicate its agreement with such a decision.
- 2) In the event that rayon yarn is the only acceptable material, continue to periodically publish a sources sought synopsis in the *Commerce Business Daily* searching for a producer of rayon yarn that can comply with the specification and with the domestic source and content requirements of the Berry Amendment.
- 3) Provide an interim progress report to me every three months.

I will reconsider this waiver upon review of DLA/DSCP's actions identified above.

Date: 7/20/01



Under Secretary of Defense
(Acquisition, Technology and Logistics)



THE UNDER SECRETARY OF DEFENSE
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**Class Determination of Domestic Non-Availability
for
210 Denier High Tenacity Nylon Fiber**

Pursuant to the authority contained in 10 U.S.C. 2533a (the "Berry Amendment"), I hereby make the following findings and determination concerning procurement of 210 high tenacity nylon fiber.

Findings

1. The Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), is the Department's principal buyer of military clothing and textile products, including components of the Modular Lightweight Load Carrying Equipment system and other supplies containing 210 denier high tenacity nylon fiber.
2. U.S. Army specifications require that certain equipment be manufactured with a synthetic fabric made of 210 denier high tenacity nylon fiber. The U.S. Army considers this fiber to be the only fiber capable of meeting the high stresses imposed on components of the Modular Lightweight Load Carrying Equipment system and certain other supplies. Other fibers cannot withstand these stresses.
3. DuPont and Monsanto, the last U.S. producers of 210 denier high tenacity nylon fiber, either moved production to Canada or ceased production entirely. Several U.S. companies have the capability to spin this fiber into the yarn needed to produce the affected end items.
4. DSCP conducted an unsuccessful market survey, including a sources sought synopsis in FedBizOpps, to identify a domestic producer of 210 denier high tenacity nylon fiber. Several U.S. companies and the American Yarn Spinners Association confirmed the domestic non-availability of 210 denier high tenacity nylon fiber. A domestic firm is attempting to develop a fiber that meets the specified requirements; however, it will take several months to ascertain whether these efforts will prove successful for production purposes.
5. DSCP suggested alternative materials that would not require a waiver of the Berry Amendment to produce the Modular Lightweight Load Carrying System, but with written explanation accepted by DSCP, the U.S. Army certified that these fabrics were determined to be unable to meet the durability requirements.



6. It is essential to continue procurement of military equipment that contains foreign-made 210 denier high tenacity nylon fiber; otherwise, U.S. producers under contract with DSCP will be unable to manufacture the Modular Lightweight Load Carrying Equipment system and other supplies needed by the U.S. Armed Forces.

Determination

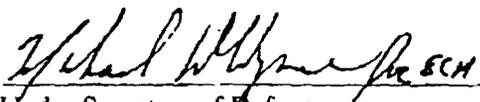
Subject to the following, I hereby determine that satisfactory quality and sufficient quantity of 210 denier high tenacity nylon fiber that complies with the Berry Amendment cannot be procured as and when needed at U.S. market prices. This determination applies to contracts being performed as of the date of this determination and thereafter.

I hereby direct DLA/DSCP to take the following actions.

- (1) Continue to periodically conduct market research searching for a domestic producer of 210 denier high tenacity nylon fiber or alternative material that meets the requirements of the U.S. Armed Forces and complies with the Berry Amendment.
- (2) If appropriate, test domestically produced component materials to determine whether any such material would meet the requirements of the U.S. Armed Forces.
- (3) Advise me if and when such a domestic producer of 210 denier high tenacity nylon fiber or a domestically-produced alternative material that meets the requirements of the U.S. Armed Forces is identified.
- (4) Obtain the required certifications from the Military Departments for any other item of supply requiring 210 denier high density nylon fiber exclusive of the Modular Lightweight Load Carrying Equipment system.

I will cancel this determination if and when DLA/DSCP advises me their efforts have been successful.

Date: MAY 9, 2003



Under Secretary of Defense
(Acquisition, Technology and Logistics)



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON DC 20301-3010

**Class Determination of Domestic Non-Availability
For Components of the Leg Restraint System in the
Navy Aircrew Common Ejection Seat (NACES)**

Pursuant to 10 U.S.C. 2533a (the "Berry Amendment"), I hereby make the following findings and determination concerning procurement of components of the leg restraint system in the Navy Aircrew Common Ejection Seat (NACES) that contain foreign produced textiles.

Findings

1. The Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), is the Department's principal buyer of military clothing and textile products, including components of the leg restraint system in the NACES that contain webbing woven of synthetic fiber and yarn materials:

<u>NSN</u>	<u>Item</u>
8465-99-793-2707	Upper/Lower Leg Strap Garter
8465-99-873-2046	Strap Webbing
8465-99-877-7679	Leg Restraint
8465-99-300-5780	Strap Webbing
8465-01-448-3457	Strap Assembly
8465-01-466-4219	Power Reel Strap Kit

2. The U.S. Navy relies upon Martin Baker, a sole source located in the United Kingdom, to provide the NACES. Components of the leg restraint system of the NACES contain textile materials. These components are critical escape system components and an integral part of the NACES. Requirements for these components are expected to continue for the foreseeable future. The U.S. Navy does not own the rights in technical data for these items.

3. The NACES is incorporated into various U.S. Navy aircraft including the F-14A, the F/A-18A/B/C/D/E/F, and the T-45.

4. The U.S. Navy considered alternatives that would not require a waiver of the Berry Amendment, including reverse engineering, and has certified that the alternatives are unacceptable.



5. It is essential to continue procurement of the leg restraint system in the NACES; otherwise, U.S. Navy air crews will not be able to conduct flight missions either in training or combat until domestic suppliers of these components are developed.

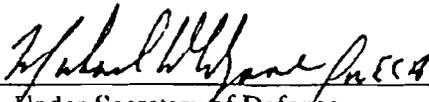
Determination

I hereby determine that satisfactory quality and sufficient quantity of the following components of the leg restraint system in the NACES that comply with the Berry Amendment cannot be procured as and when needed at U.S. market prices:

<u>NSN</u>	<u>Item</u>
8465-99-793-2707	Upper/Lower Leg Strap Garter
8465-99-873-2046	Strap Webbing
8465-99-877-7679	Leg Restraint
8465-99-300-5780	Strap Webbing
8465-01-448-3457	Strap Assembly
8465-01-466-4219	Power Reel Strap Kit

This determination applies to contracts and delivery orders being performed as of the date of this determination and thereafter.

Date: May 9, 2003



Under Secretary of Defense
(Acquisition, Technology and Logistics)



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Class Determination of Domestic Non-Availability for Cationic - Dyeable Continuous Filament Polyester Tow

Pursuant to the authority contained in 10 U.S.C. 2533a (the "Berry Amendment"), I hereby make the following findings and determination concerning procurement of cationic-dyeable continuous filament polyester tow.

Findings

1. The Defense Supply Center Philadelphia (DSCP), a field activity of the Defense Logistics Agency (DLA), is the Department's principal buyer of military clothing and textile products, including certain U.S. Air Force windbreakers containing cationic-dyeable continuous filament polyester tow.
2. U.S. Air Force specifications require that certain windbreakers be manufactured with a particular polyester/wool gabardine fabric. This fabric contains cationic-dyeable continuous filament polyester tow. The U.S. Air Force currently considers this polyester/wool gabardine fabric (i.e., Style 3990-1605 (4XZ), MIL-C-10176J, Type II, Class 12) to be the only fabric that meets their requirements.
3. The cationic-dyeable continuous filament polyester used in polyester/wool gabardine fabric to produce certain U.S. Air Force windbreakers is a synthetic material extruded from a polymer resin chip. To manufacture this gabardine fabric, the cationic-dyeable continuous filament polyester tow is cut into staple fiber, blended with wool, spun into a yarn, twisted, woven into the fabric, and dyed. The extrusion process accounts for less than 5% of the value of the fabric according to Burlington Industries, its producer.
4. DuPont, the last U.S. producer of cationic-dyeable continuous filament polyester tow, ceased production in 2001. Beginning January 21, 2002, cationic-dyeable continuous filament polyester tow has been available only from DAK Americas, Monterrey, Mexico, where it is extruded from a polymer resin chip that is produced in the United States.
5. Burlington advised that its only other U.S. source of polyester fiber, Kosa Fibers, is not interested in producing this particular polyester. DSCP conducted an unsuccessful market survey, including a sources sought synopsis in FedBizOpps, to identify a domestic producer of cationic-dyeable continuous filament polyester tow. The problem obtaining domestic cationic-dyeable continuous filament polyester tow is expected to be chronic, and it is not expected to change.
6. DSCP suggested two alternative fabrics that would not require a waiver of the Berry Amendment to produce the affected windbreakers, but with written explanation accepted



by DSCP, the Air Force certified that these fabrics would be inappropriate for the intended purpose. Neither meets expectations for warmth, appearance, function, and durability.

7. It is essential to continue procurement of U.S. Air Force windbreakers that contain cationic-dyeable continuous filament polyester tow produced outside the U.S.; otherwise, U.S. producers under contract with DSCP will be unable to manufacture the lightweight jackets needed to meet new issue and sustainment needs.

Determination

Subject to the following, I hereby determine that satisfactory quality and sufficient quantity of cationic-dyeable continuous filament polyester tow that complies with the Berry Amendment cannot be procured as and when needed at U.S. market prices. This determination applies to contracts being performed as of January 21, 2002, and thereafter.

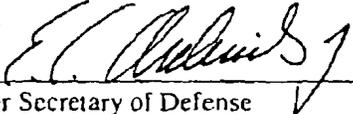
I hereby direct DLA/DSCP to take the following actions.

- (1) Continue to periodically conduct market research searching for a domestic producer of cationic-dyeable continuous filament polyester tow or alternative material that meets the requirements of the U.S. Air Force and complies with the Berry Amendment
- (2) If appropriate, test domestically produced component materials to determine whether any such material would meet the requirements of the U.S. Air Force.
- (3) Advise me if and when such a domestic producer of cationic-dyeable continuous filament polyester tow or a domestically-produced alternative material is identified.

I will reconsider this waiver if and when DLA/DSCP notifies me their efforts identified above have been successful.

Date:

7/8/02



Under Secretary of Defense
(Acquisition, Technology and Logistics)