

Section 804(d) 471 Pub. L. 110-181

1 “(2) This subsection does not apply to high perform-
2 ance magnets.

3 “(j) STREAMLINED COMPLIANCE FOR COMMERCIAL
4 DERIVATIVE MILITARY ARTICLES.—(1) Subsection (a)
5 shall not apply to an item acquired under a prime contract
6 if the Secretary of Defense or the Secretary of a military
7 department determines that—

8 “(A) the item is a commercial derivative mili-
9 tary article; and

10 “(B) the contractor certifies that the contractor
11 and its subcontractors have entered into a contrac-
12 tual agreement, or agreements, to purchase an
13 amount of domestically melted specialty metal in the
14 required form, for use during the period of contract
15 performance in the production of the commercial de-
16 rivative military article and the related commercial
17 article, that is not less than the greater of—

18 “(i) an amount equivalent to 120 percent
19 of the amount of specialty metal that is re-
20 quired to carry out the production of the com-
21 mercial derivative military article (including the
22 work performed under each subcontract); or

23 “(ii) an amount equivalent to 50 percent of
24 the amount of specialty metal that is purchased
25 by the contractor and its subcontractors for use

TAB B

1 during such period in the production of the
2 commercial derivative military article and the
3 related commercial article.

4 “(2) For the purposes of this subsection, the amount
5 of specialty metal that is required to carry out the produc-
6 tion of the commercial derivative military article includes
7 specialty metal contained in any item, including commer-
8 cially available off-the-shelf items, incorporated into such
9 commercial derivative military article.

10 “(k) NATIONAL SECURITY WAIVER.—(1) Notwith-
11 standing subsection (a), the Secretary of Defense may ac-
12 cept the delivery of an end item containing noncompliant
13 materials if the Secretary determines in writing that ac-
14 ceptance of such end item is necessary to the national se-
15 curity interests of the United States.

16 “(2) A written determination under paragraph (1)—

17 “(A) may not be delegated below the level of
18 the Deputy Secretary of Defense or the Under Sec-
19 retary of Defense for Acquisition, Technology, and
20 Logistics;

21 “(B) shall specify the quantity of end items to
22 which the waiver applies and the time period over
23 which the waiver applies; and

24 “(C) shall be provided to the congressional de-
25 fense committees prior to making such a determina-

1 (2) an individual Department of Defense pro-
2 gram, except to the extent that such domestic non-
3 availability determination applies to contracts en-
4 tered into after the date of the enactment of this
5 Act.

6 (i) **TRANSPARENCY REQUIREMENT FOR COMMER-**
7 **CIALLY AVAILABLE OFF-THE-SHELF ITEM EXCEPTION.**—
8 The Secretary of Defense shall submit to the Committees
9 on Armed Services of the Senate and House of Represent-
10 atives, not later than December 30, 2008, a report on the
11 use of authority provided under subsection (h) of section
12 2533b of title 10, United States Code, as amended by this
13 section. Such report shall include, at a minimum, a de-
14 scription of types of items being procured as commercially
15 available off-the-shelf items under such subsection and in-
16 corporated into noncommercial items. The Secretary shall
17 submit an update of such report to such committees not
18 later than December 30, 2009.

19 **SEC. 805. PROCUREMENT OF COMMERCIAL SERVICES.**

20 (a) **REGULATIONS REQUIRED.**—Not later than 180
21 days after the date of the enactment of this Act, the Sec-
22 retary of Defense shall modify the regulations of the De-
23 partment of Defense for the procurement of commercial
24 services for or on behalf of the Department of Defense.