

**CLASS DETERMINATION AND FINDINGS
DOMESTIC NON-AVAILABILITY DETERMINATION (DNAD) FOR HAND OR
MEASURING TOOLS IN FEDERAL SUPPLY CLASSIFICATION (FSC) 51 & 52**

Pursuant to the authority contained in Section 847 of the National Defense Authorization Act for Fiscal Year 2011, (Pub. L. 111-383), and Section 2533a, Title 10, United States Code, as implemented by Defense Federal Acquisition Regulation Supplement (DFARS) 225.7002-2(b), I hereby make the following findings and determination for the Department of the Army.

FINDINGS

1. The Product Manager Office for Sets, Kits, Outfits, and Tools (PM-SKOT) is the life-cycle manager for sets, kits, and outfits of hand and measuring tools procured throughout the Army. Its primary responsibility is to ensure Soldiers have industrial quality hand or measuring tools to successfully perform their missions. The Army regularly procures a wide variety of hand or measuring tools in sets, kits, or outfits which support various field and sustainment maintenance systems and vehicles. Some of the tool sets, such as the Mobile Maintenance Equipment Systems and the Family of Engineer and Combat Construction Sets, contain thousands of tools. If one tool in a set is not produced in the United States, it can delay the entire acquisition process or force the fielding of incomplete sets.
2. The Berry Amendment, 10 U.S.C. 2533a, as implemented by DFARS 225.7002-1, Restrictions, requires hand or measuring tools listed in Federal Supply Classifications 51 and 52 to be produced in the United States. DFARS PGI 225.7002-1(b) defines "produced in the United States" to mean "that the hand or measuring tool was assembled in the United States out of components, or otherwise made from raw materials into the finished product that is to be provided to the Government." DFARS 225.7002-2 lists several exceptions to the Berry Amendment, including: acquisitions at or below the simplified acquisition threshold, acquisitions of items listed in FAR 25.104(a), acquisitions outside the United States in support of combat operations, acquisitions of hand or measuring tools in support of contingency operations, and acquisitions of hand or measuring tools under unusual and compelling urgency in accordance with FAR 6.302-2. DFARS 225.7002-2 also lists as an exception acquisitions which cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. Under this exception, the Secretary of the Army is authorized to make a Domestic Nonavailability Determination (DNAD), in this circumstance for the tools listed in Enclosure 1.
3. The Department of Defense's (DoD) demand for certain hand or measuring tools is insufficient to incentivize manufacturers to produce or assemble the tools in the United States. Commercial demands for these tools far outweigh the demands of DoD. When compared to the demand in the commercial marketplace, DoD represents less than 5% of industrial sales of hand or measuring tools. As a result, it is not cost effective for manufacturers to produce these tools and sets of tools in the United States.

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4. PM-SKOT along with Edgewood Chemical and Biological Center (ECBC) and the Armament Research, Development and Engineering Center (ARDEC) continuously survey the market in accordance with FAR 10.002 on each set, kit, or outfit (SKO) containing hand or measuring tools to determine which tools are compliant with the Berry Amendment. As part of the continuous market research process, ECBC and ARDEC review manufacturers' information through various channels, including: e-commerce websites, other manufacturers' websites, telephone conversations with manufacturers and their representatives, email inquiries of the manufacturers and their representatives, past procurements, solicitation responses, published requests for information, personal contact with manufacturers' representatives, printed catalogs and marketing literature, industry associations, websites claiming to list or offer items "Made in America", visits to distributors, retailers and wholesalers offering the items for which the waiver is requested, visits to manufacturers claiming to offer items made in the USA, personal inspections, and PM-SKOT's "Industry Days." In November/December 2012, ECBC and ARDEC engineers compiled a list of non-compliant Berry Amendment hand or measuring tools in support of this DNAD effort.

On 11 December 2012, a request for information (RFI) was released and posted to FedBizOpps to locate sources for 43 tools market research revealed as Berry non-compliant. One tool manufacturer provided a response to the RFI, stating 4 of the 43 tools and classes of tools are produced in the United States. ARDEC reviewed the response received and conducted additional market research from mid-January to 1 March 2013. The final results of the market research revealed 39 of the 43 tools and classes of tools are not produced in the United States. The 39 tools and classes of tools not produced in the United States listed in Enclosure 1 of the Class Determination and Findings, Domestic Nonavailability Determination for Hand and Measuring Tools cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. Defense Logistics Agency (DLA) responded via email (Enclosure 3) stating it does not manage any of the tools or classes of tools listed in Enclosure 1.

5. See Enclosure 2 for an analysis of alternatives to a DNAD and why these alternatives are unacceptable.

6. The tools listed in Enclosure 1 are not managed by DLA. See Enclosure 3 for a written confirmation from DLA that the tools listed in Enclosure 1 are not available from DLA to meet Army requirements.

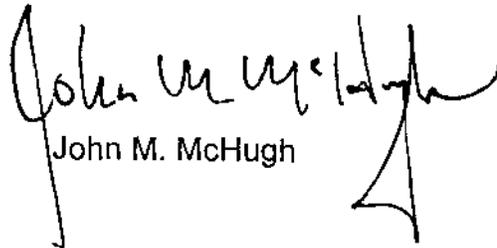
7. If a DNAD is not approved, PM-SKOT will be forced to field tool kits without all required tools and Soldiers will be unable to accomplish missions. It is essential to procure fully equipped tool sets, kits, and outfits to meet recurring PM-SKOT requirements for new issue and sustainment needs.

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DETERMINATION

Based upon the finding above, I determine that the 39 non-Berry Amendment compliant hand or measuring tools (Federal Supply Classes 51 and 52) listed in Enclosure 1 are not produced in the United States, and cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at the United States market prices.

This determination will be effective for 10 years from the date of signature below. If one or more of the listed tools become available from a U.S. manufacturer, the exception will no longer apply for that tool.


John M. McHugh

Enclosure 1
 Non-Berry Amendment Compliant Tools

	Description	FSC
1	Tubular Box Spanner, 100 +/- 50 mm length, 10 mm X 11 mm double ended female hex head. Able to accept a 1/4" diameter Tommy Bar	51
2	Tommy Bar, 1/4" diameter, 5" long for above tubular box spanner	51
3	Locking Pliers; all lengths and styles. Also called Wrench, Plier and Plier, Clamp.	51
4	Clamp, sliding arm style, metalworking	51
5	Bar Clamp, Spreader. All sizes.	51
6	Crimper, for RJ-22 and RJ-11, all in one design	51
7	Crimper, Ratcheting, for RJ-45 and RJ-11, all in one design	51
8	Screwdriver, Cordless	51
9	Hammer Drill, Electric. Corded. Other than 5/8" chuck.	51
10	Hammer Drill, Electric. Cordless.	51
11	Drill, Electric, Cordless, 12 Volt, 14 Volt, 18 Volt, 20 Volt, 24 Volt, 36 Volt	51
12	Close Quarter Angle Drills, Corded and Cordless	51
13	Metal-Cutting Circular Saw, Corded, 7-1/4" blade	51
14	Portable Band Saw, Corded	51
15	Circular Saw, Electric; corded and cordless	51
16	Pneumatic Hammer Drill, SDS	51
17	Reciprocating Saw, corded and cordless	51
18	Saw, Circular Trimcut 5-3/8" Dia, Cordless	51
19	Robo Grip Pliers, Self-adjusting, 10" length, V notch, spring loaded	51
20	Ratcheting Screwdriver Set with bits, 1/4" drive roller clutch ratchet style driver and assorted bits.	51
21	Ratcheting Screwdriver and Bit Set 1/4" female drive	51
22	Crosscut bow saw	51
23	Felling lever	51
24	Plumb Laser Pointing Kit	52
25	Blade, Jewelers Saw, all sizes	51
26	Screwdriver, Ratcheting, Yankee Style	51
27	Crowfoot, Ratcheting	51
28	Wrench, Combination Ratcheting, Spline. All sizes	51
29	Adapter, Ratcheting Set, for converting the above to thin ratchets	51
30	Slide Caliper, Electronic	51
31	Hacksaw frame, Insulated, 300mm blade, 1,000V per IEC 60900	51
32	Cable Stripper, Pocket	51
33	Cable ripper, 3-1/2" blade	51
34	3/8" Ratchet Wrench Bit Adapter, 1/4"	51
35	Cloth Tape Measure	52
36	Jewelers Files and Needle files; all styles, cuts and lengths	51
37	Hand Files, American and Swiss Pattern; all styles, cuts and lengths including rasps	51
38	Magnetic screwdriver bit holders, all sizes	51
39	Magnetic nut driver bits, all sizes	51