

1987—Subsecs. (a), (b)(2). Pub. L. 100-224 substituted “50 U.S.C. App.” for “50 U.S.C.” in parenthetical after “Export Administration Act of 1979”.

Subsec. (d)(1). Pub. L. 100-180 inserted par. (1) designation.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

##### EFFECTIVE DATE

Pub. L. 99-500, §101(c) [title X, §951(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-165, Pub. L. 99-591, §101(c) [title X, §951(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-165, and Pub. L. 99-661, div. A, title IX, formerly title IV, §951(c), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “Section 2327 of title 10, United States Code [now 10 U.S.C. 4871] (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].”

##### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

##### PROHIBITION ON OPERATION OR PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS

Pub. L. 116-92, div. A, title VIII, §848, Dec. 20, 2019, 133 Stat. 1508, provided that:

“(a) PROHIBITION ON AGENCY OPERATION OR PROCUREMENT.—The Secretary of Defense may not operate or enter into or renew a contract for the procurement of—

“(1) a covered unmanned aircraft system that—

“(A) is manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

“(B) uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

“(C) uses a ground control system or operating software developed in a covered foreign country or by an entity domiciled in a covered foreign country; or

“(D) uses network connectivity or data storage located in or administered by an entity domiciled in a covered foreign country; or

“(2) a system manufactured in a covered foreign country or by an entity domiciled in a covered foreign country for the detection or identification of covered unmanned aircraft systems.

“(b) EXEMPTION.—The Secretary of Defense is exempt from the restriction under subsection (a) if the operation or procurement is for the purposes of—

“(1) Counter-UAS surrogate testing and training; or

“(2) intelligence, electronic warfare, and information warfare operations, testing, analysis, and training.

“(c) WAIVER.—The Secretary of Defense may waive the restriction under subsection (a) on a case by case

basis by certifying in writing to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] that the operation or procurement is required in the national interest of the United States.

“(d) DEFINITIONS.—In this section:

“(1) COVERED FOREIGN COUNTRY.—The term ‘covered foreign country’ means the People’s Republic of China.

“(2) COVERED UNMANNED AIRCRAFT SYSTEM.—The term ‘covered unmanned aircraft system’ means an unmanned aircraft system and any related services and equipment.”

##### ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108-136, div. A, title VIII, §821, Nov. 24, 2003, 117 Stat. 1546, provided that:

“(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

“(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

“(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense’s need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

“(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

“(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.”

#### § 4872. Acquisition of sensitive materials from non-allied foreign nations: prohibition

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense may not—

(1) procure any covered material melted or produced in any covered nation, or any end item that contains a covered material manufactured in any covered nation, except as provided by subsection (c); or

(2) sell any material from the National Defense Stockpile, if the National Defense Stockpile Manager determines that such a sale is not in the national interests of the United States, to—

(A) any covered nation; or

(B) any third party that the Secretary reasonably believes is acting as a broker or agent for a covered nation or an entity in a covered nation.

(b) APPLICABILITY.—Subsection (a) shall apply to prime contracts and subcontracts at any tier.

(c) EXCEPTIONS.—Subsection (a) does not apply under the following circumstances:

(1) If the Secretary of Defense determines that covered materials of satisfactory quality

and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(2) To the procurement of an end item described in subsection (a)(1) or the sale of any covered material described under subsection (a)(1) by the Secretary outside of the United States for use outside of the United States.

(3) To the purchase by the Secretary of an end item containing a covered material that is—

(A) a commercially available off-the-shelf item (as defined in section 104 of title 41), other than—

(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED MATERIAL.—The term “covered material” means—

(A) samarium-cobalt magnets;

(B) neodymium-iron-boron magnets;

(C) tungsten metal powder;

(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy; and

(E) tantalum metals and alloys.

(2) COVERED NATION.—The term “covered nation” means—

(A) the Democratic People’s Republic of North Korea;

(B) the People’s Republic of China;

(C) the Russian Federation; and

(D) the Islamic Republic of Iran.

(3) END ITEM.—The term “end item” has the meaning given in section 4863(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, § 871(a), Aug. 13, 2018, 132 Stat. 1904, § 2533c; amended Pub. L. 116–92, div. A, title VIII, § 849, Dec. 20, 2019, 133 Stat. 1508; renumbered § 4872 and amended Pub. L. 116–283, div. A, title VIII, § 844(a), title XVIII, § 1870(d)(2), (3), Jan. 1, 2021, 134 Stat. 3766, 4286; Pub. L. 117–81, div. A, title XVII, § 1701(t)(2)(B), (C), (3), Dec. 27, 2021, 135 Stat. 2150.)

AMENDMENT OF SUBSECTIONS (a)(1) AND (c)(3)(A)(i)

*Pub. L. 116–283, div. A, title VIII, § 844, Jan. 1, 2021, 134 Stat. 3766, provided that, effective 5 years after Jan. 1, 2021, section 2533c of this title, which is now this section, is amended as follows:*

*(1) in subsection (a)(1), by striking “material melted” and inserting “material mined, refined, separated, melted.”; and*

*(2) in subsection (c)(3)(A)(i), by striking “tungsten” and inserting “covered material”.*

*See Codification and 2021 Amendment notes below.*

**Editorial Notes**

CODIFICATION

Pub. L. 116–283, § 1870(d)(2), which had initially directed the transfer of section 2536 of this title to this section, was amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), and, after that amendment, such transfer was no longer directed. Instead, Pub. L. 116–283, as amended by Pub. L. 117–81, transferred section 2533c of this title to this section and section 2536 of this title to section 4874.

Amendments by section 844(a) of Pub. L. 116–283, which were directed to section 2533c of this title effective 5 years after Jan. 1, 2021, are to be executed to this section, to reflect the probable intent of Congress and the renumbering of section 2533c as this section by Pub. L. 116–283, as amended by Pub. L. 117–81, effective Jan. 1, 2022.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(d)(3)(B), as amended by Pub. L. 117–81, § 1701(t)(3), amended section catchline generally. Prior to amendment, section catchline read as follows: “Prohibition on acquisition of sensitive materials from non-allied foreign nations”.

Pub. L. 116–283, § 1870(d)(2), as amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), renumbered section 2533c of this title as this section.

Subsec. (a)(1). Pub. L. 116–283, § 844(a)(1), substituted “material mined, refined, separated, melted,” for “material melted”. See Codification note above.

Subsec. (c)(3)(A)(i). Pub. L. 116–283, § 844(a)(2), substituted “covered material” for “tungsten”. See Codification note above.

Subsec. (d)(3). Pub. L. 116–283, § 1870(d)(3)(A), as amended by Pub. L. 117–81, § 1701(t)(3), substituted “section 4863(m)” for “section 2533b(m)”.

2019—Subsec. (a)(2). Pub. L. 116–92, § 849(a), substituted “material” for “covered material” in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 116–92, § 849(b), added subpar. (E).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below for section 1870(d)(2), (3) of Pub. L. 116–283.

Pub. L. 116–283, div. A, title VIII, § 844(b), Jan. 1, 2021, 134 Stat. 3766, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date that is 5 years after the date of the enactment of this Act [Jan. 1, 2021].”

Amendment by section 1870(d)(2), (3) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

**[§ 4873. Additional requirements pertaining to printed circuit boards]**

**Editorial Notes**

CODIFICATION

Pub. L. 117–81, div. A, title XVII, § 1701(e)(2)(A), Dec. 27, 2021, 135 Stat. 2138, attempted to transfer section