

“(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 and Critical Materials Board of Directors pursuant to section 10 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-1), 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; Pub. L. 117-263, div. A, title XIV, § 1411(d)(2)(B), Dec. 23, 2022, 136 Stat. 2872.)

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

2022—Subsec. (c)(3)(B). Pub. L. 117-263 substituted “Strategic and Critical Materials Board of Directors pursuant to section 10 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-1)” for “Strategic Materials Protection Board pursuant to section 187 of this title”.

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

(a) IN GENERAL.—

(1) Beginning on the date determined under paragraph (3), the Secretary of Defense may not acquire a covered printed circuit board from a covered nation.

(2) Paragraph (1) shall not apply with respect to any acquisition of supplies or services below the micro-purchase threshold under section 3573 of this title.

(3) Paragraph (1) shall take effect on January 1, 2027.

(b) WAIVER.—

(1) The Secretary may waive the prohibition under subsection (a) if the Secretary determines in writing that—

(A) there are no significant national security concerns regarding counterfeiting, quality, or unauthorized access created by such waiver;

(B) the waiver is required to support national security; and

(C) a covered printed circuit board of satisfactory quality and sufficient quantity, in the required form, cannot be procured as and when needed from nations other than a covered nation at reasonable cost, excluding comparisons with non-market economies.

(2) Not later than 10 days after the Secretary provides a waiver under paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notice setting forth the reasoning for the waiver, together with a copy of the waiver itself.

(c) DEFINITIONS.—In this section:

(1) 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.

(2) COVERED PRINTED CIRCUIT BOARD.—The term “covered printed circuit board” means any specified type of partially manufactured or complete bare printed circuit board or fully or partially assembled printed circuit board that—

(A) performs a mission critical function in any product or service that is not a commercial product or commercial service; or

(B) is a component of—

- (i) a defense security system; or
- (ii) a system, other than a defense security system, that transmits or stores information and which the Secretary identifies as national security sensitive in the contract under which such printed circuit board is acquired.

(3) SECRETARY.—The term “Secretary” means the Secretary of Defense.

(4) COMMERCIAL PRODUCT; COMMERCIAL SERVICE; COMMERCIALLY AVAILABLE OFF-THE SHELF ITEM.—The terms “commercial product”, “commercial service”, and “commercially available off-the-shelf item” have the meanings given such terms in sections 103, 103a, and 104 of title 41, respectively.

(5) DEFENSE SECURITY SYSTEM.—

(A) The term “defense security system” means an information system (including a telecommunications system) used or operated by the Department of Defense, by a contractor of the Department, or by another organization on behalf of the Department, the function, operation, or use of which—

- (i) involves command and control of an armed force;
- (ii) involves equipment that is an integral part of a weapon or weapon system; or
- (iii) subject to subparagraph (B), is critical to the direct fulfillment of military missions.

(B) Subparagraph (A)(iii) does not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(6) SPECIFIED TYPE.—The term “specified type” means a printed circuit board that is—

(A) a component of an electronic device that facilitates the routing, connecting, transmitting or securing of data and is commonly connected to a network, and

(B) any other end item, good, or product specified by the Secretary in accordance with subsection (d)(2).

(d) RULEMAKING.—

(1) The Secretary may issue rules providing that subsection (a) may not apply with respect to an acquisition of commercial products, commercial services, and commercially available off-the-shelf items if—