

(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

(1) Direct obligations from the Fund.

(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.

(Added Pub. L. 111-383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315, § 2508; amended Pub. L. 115-91, div. A, title X, § 1081(g)(1), Dec. 12, 2017, 131 Stat. 1601; Pub. L. 116-92, div. A, title IX, § 902(75), Dec. 20, 2019, 133 Stat. 1552; renumbered § 4817, Pub. L. 116-283, div. A, title XVIII, § 1867(b), Jan. 1, 2021, 134 Stat. 4281; Pub. L. 116-283, div. A, title XVIII, § 1867(d)(7), as added Pub. L. 117-81, div. A, title XVII, § 1701(b)(22)(C), Dec. 27, 2021, 135 Stat. 2135.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2508 of this title as this section.

Subsec. (d)(1). Pub. L. 116-283, § 1867(d)(7), as added by Pub. L. 117-81, § 1701(b)(22)(C), substituted “‘chapters 381 through 385 and chapter 389” for “this chapter”.

2019—Subsec. (b). Pub. L. 116-92 substituted “‘Under Secretary of Defense for Acquisition and Sustainment” for “‘Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2017—Pub. L. 115-91, § 1081(g)(1), made technical amendment to directory language of Pub. L. 111-383, § 896(b)(1), which added this section.

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 OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title X, § 1081(g), Dec. 12, 2017, 131 Stat. 1601, provided that the amendment made by section 1081(g)(1) is effective as of Jan. 7, 2011, and as if included in Pub. L. 111-383 as enacted.

§ 4818. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President’s discretion, to the enforcement or the administration of chapters 381 through 385 and chapter 389 and the regulations issued under such chapters.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been de-

defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under subsection (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term “person” includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term “national defense” means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102-484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670, § 2507; amended Pub. L. 103-160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 109-163, div. A, title X, § 1056(c)(5), Jan. 6, 2006, 119 Stat. 3439; renumbered § 4818 and amended Pub. L. 116-283, div. A, title XVIII, § 1867(b), (d)(5), Jan. 1, 2021, 134 Stat. 4281, 4282; Pub. L. 117-81, div. A, title XVII, § 1701(b)(22)(B), Dec. 27, 2021, 135 Stat. 2135.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, § 1867(b), renumbered section 2507 of this title as this section.

Subsec. (a). Pub. L. 116-283, § 1867(d)(5), as amended by Pub. L. 117-81, § 1701(b)(22)(B), substituted “‘of chapters

381 through 385 and chapter 389” for “of this chapter” and “under such chapters” for “under this chapter”.

2006—Subsec. (d). Pub. L. 109-163 substituted “subsection (a)” for “section (a)”.

1993—Pub. L. 103-160 inserted headings in subsecs. (a) to (f).

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.

§ 4819. Modernization of acquisition processes to ensure integrity of industrial base

(a) **DIGITIZATION AND MODERNIZATION.**—The Secretary of Defense shall streamline and digitize the Department of Defense approach for identifying and mitigating risks to the defense industrial base.

(b) **OBJECTIVE.**—The objective of subsection (a) shall be to employ digital tools, technologies, and approaches to ensure the accessibility of relevant defense industrial base data to key decision-makers in the Department.

(c) **ANALYTICAL FRAMEWORK.**—(1) The Under Secretary of Defense for Acquisition and Sustainment, in coordination with the Director of the Defense Counterintelligence and Security Agency and the heads of other elements of the Department of Defense as appropriate, shall develop an analytical framework for risk mitigation across the acquisition process in implementing subsections (a) and (b).

(2) The analytical framework required under paragraph (1) shall include the following elements:

(A) Characterization and monitoring of supply chain risks, such as those identified through the supply chain risk management process of the Department and by the Federal Acquisition Security Council, and including—

- (i) material sources and fragility, including the extent to which sources, items, materials, and articles are mined, produced, or manufactured within or outside the United States;
- (ii) telecommunications services or equipment;
- (iii) counterfeit parts;
- (iv) cybersecurity of contractors;
- (v) video surveillance services or equipment;
- (vi) vendor vetting in contingency or operational environments;
- (vii) other electronic or information technology products and services; and
- (viii) other risk areas as determined appropriate by the Secretary of Defense.

(B) Characterization and monitoring of risks posed by contractor behavior that constitutes or may constitute violations of laws or regulations, including those relating to—

- (i) fraud;

- (ii) ownership structures;
- (iii) trafficking in persons;
- (iv) workers’ health and safety;
- (v) affiliation with the enemy;
- (vi) foreign influence; and
- (vii) other risk areas as deemed appropriate by the Secretary of Defense.

(C) Characterization and assessment of the acquisition processes and procedures of the Department of Defense, including—

- (i) market research;
- (ii) responsibility determinations, including consideration of the need for special standards of responsibility to address the risks described in subparagraphs (A) and (B);
- (iii) facilities clearances;
- (iv) the development of contract requirements;
- (v) the technical evaluation of offers and contract awards;
- (vi) contractor mobilization, including hiring, training, and establishing facilities;
- (vii) contract administration, contract management, and oversight;
- (viii) contract audit for closeout;
- (ix) suspension and debarment activities and administrative appeals activities;
- (x) contractor business system reviews;
- (xi) processes and procedures related to supply chain risk management and processes and procedures implemented pursuant to section 3252 of this title; and
- (xii) other relevant processes and procedures.

(D) Characterization and monitoring of the health and activities of the defense industrial base, including those relating to—

- (i) balance sheets, revenues, profitability, and debt;
- (ii) investment, innovation, and technological and manufacturing sophistication;
- (iii) finances, access to capital markets, and cost of raising capital within those markets;
- (iv) corporate governance, leadership, and culture of performance; and
- (v) history of performance on past Department of Defense and government contracts.

(E) Characterization and assessment of industrial base support policies, programs, and procedures, including—

- (i) limitations and acquisition guidance relevant to the national technology and industrial base;
- (ii) limitations and acquisition guidance relevant to section 4862 of this title;
- (iii) the Industrial Base Analysis and Sustainment program of the Department, including direct support and common design activities;
- (iv) the Small Business Innovation Research Program (as defined in section 9(e) of the Small Business Act (15 U.S.C. 638(e)));
- (v) the Manufacturing Technology Program established under sections 4841 and 4842 of this title;
- (vi) programs relating to the Defense Production Act of 1950 (50 U.S.C. 4511¹ et seq.); and

¹ See References in Text note below.