

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

2024—Subsec. (a). Pub. L. 118-159, §844(b)(1), inserted “or (e)” after “subsection (c)” in introductory provisions.

Subsec. (c)(1). Pub. L. 118-159, §844(b)(2)(A), inserted “or the Secretary of the military department concerned” after “Secretary of Defense” in introductory provisions.

Subsec. (c)(2). Pub. L. 118-159, §844(b)(2)(B), inserted “in support of contingency operations or” before “for use outside”.

Subsecs. (d) to (f). Pub. L. 118-159, §844(b)(3), (4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

2023—Subsec. (c). Pub. L. 118-31, §834(1), substituted “Subsection (a)(1)” for “Subsection (a)” in introductory provisions.

Subsec. (c)(1). Pub. L. 118-31, §834(2), substituted “Defense—” for “Defense determines that covered materials”, inserted subpar. (A) designation and “identifies a specific end item for which a specific covered material” before “of satisfactory quality”, and added subpar. (B).

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, as amended by Pub. L. 118-31, div. A, title VIII, §854, Dec. 22, 2023, 137 Stat. 345, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date that is 6 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—

(A) the contractor is capable of meeting minimum requirements that the Secretary deems necessary to provide for the security of national security networks and weapon systems; including, at a minimum, compliance with section 224 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92; 10 U.S.C. 2302 note); and

(B) either—

(i) the Government and the contractor have agreed to a contract requiring the contractor to take certain actions to ensure the integrity and security of the item, including protecting the item from unauthorized access, use, disclosure, disruption, modification, or destruction; or

(ii) the Secretary has determined that the contractor has adopted such procedures, tools, and methods for identifying the sources of components of such item, based on commercial best practices, that meet or exceed the applicable trusted supply chain and operational security standards of the Department of Defense.

(2) The Secretary may issue rules specifying end items, goods, and products for which a printed circuit board that is a component thereof shall be a specified type if the Secretary has promulgated final regulations, after an opportunity for notice and comment that is not less than 12 months, implementing this section.

(3) In carrying out this section, the Secretary shall, to the maximum extent practicable, avoid imposing contractual certification requirements with respect to the acquisition of commercial products, commercial services, or commercially available off-the-shelf items.

(e) APPLICABILITY.—This section shall apply only with respect to contracts entered into after the issuance of a final rule implementing this section.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Department of Defense from entering into a contract with an entity that connects to the facilities of a third party, for the purposes of backhaul, roaming, or interconnection arrangements, on the basis of the noncompliance by the third party with the provisions of this section or use of equipment or services that do not route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(Added Pub. L. 116–283, div. A, title VIII, §841(a), Jan. 1, 2021, 134 Stat. 3762, §2533d; amended Pub. L. 117–81, div. A, title VIII, §851(a), Dec. 27, 2021, 135 Stat. 1844; renumbered §4873 and amended Pub. L. 117–81, div. A, title XVII, §1701(e)(2)(A), Dec. 27, 2021, 135 Stat. 2138.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 117–81 renumbered section 2533d of this title as this section.

Subsec. (a)(1). Pub. L. 117–81, §851(a)(1)(A), substituted “the date determined under paragraph (3)” for “January 1, 2023”.

Subsec. (a)(2). Pub. L. 117–81 substituted “section 3573” for “section 2338”.

Subsec. (a)(3). Pub. L. 117–81, §851(a)(1)(B), added par. (3).

Subsec. (c)(2). Pub. L. 117–81, §851(a)(2)(A)(i), inserted “specified type of” after “means any” in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 117–81, §851(a)(2)(A)(ii), struck out “(as such terms are defined under sections 103 and 103a of title 41, respectively)” after “commercial service”.

Subsec. (c)(2)(B). Pub. L. 117–81, §851(a)(2)(A)(iii), amended subpar. (b) generally. Prior to amendment, subpar. (B) read as follows: “the Secretary designates as a covered printed circuit board, after reasonable notice, based on a determination that the designation is required to support national security.”

Subsec. (c)(4) to (6). Pub. L. 117–81, §851(a)(2)(B), added pars. (4) to (6).

Subsec. (d). Pub. L. 117–81, §851(a)(3), amended subsec. (d) generally. Prior to amendment, text read as follows: “Not later than May 1, 2022, the Secretary shall promulgate regulations, after an opportunity for notice and comment, implementing this section.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1701(e)(1)(A) of Pub. L. 117–81, renumbering section 2358d of this title as this section, deemed to have taken effect immediately before section 1881 of Pub. L. 116–283, subsec. (a) of which had repealed chapter 148 of this title, where section 2358d was located. See section 881(a) of Pub. L. 117–263, set out as a note under section 4027 of this title.

TRUSTED SUPPLY

Pub. L. 116–283, div. A, title VIII, §841(c), Jan. 1, 2021, 134 Stat. 3764, provided that: “The Secretary of Defense

shall apply the requirements of section 224 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92; 10 U.S.C. 2302 note [now 10 U.S.C. 4501 note prec.] to the acquisition of covered printed circuit boards (as such term is defined under [former] section 2533d(c) of title 10, United States Code, [now 10 U.S.C. 4873(c)] as added by this section).”

§ 4874. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(B) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(i) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(ii) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

(c) DEFINITIONS.—In this section:

(1) The term “entity controlled by a foreign government” includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term “proscribed category of information” means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term “Secretary concerned” means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102-484, div. A, title VIII, §836(a)(1), Oct. 23, 1992, 106 Stat. 2462, §2536; amended Pub. L. 103-35, title II, §201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103-160, div. A, title VIII, §842(a)-(c)(1), Nov. 30, 1993, 107 Stat. 1719; Pub. L. 104-201, div. A, title VIII, §828, Sept. 23, 1996, 110 Stat. 2611; renumbered §4874, Pub. L. 116-283, div. A, title XVIII, §1870(d)(2), Jan. 1, 2021, 134 Stat. 4286; Pub. L. 117-81, div. A, title XVII, §1701(t)(2)(B), (C), Dec. 27, 2021, 135 Stat. 2150.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1870(d)(2), as amended by Pub. L. 117-81, §1701(t)(2)(B), (C), renumbered section 2536 of this title as this section.

1996—Subsec. (b). Pub. L. 104-201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “WAIVER AUTHORITY.—The Secretary concerned may waive the application of subsection (a) to a contract award if the Secretary concerned determines that the waiver is essential to the national security interests of the United States.”

1993—Pub. L. 103-160, §842(c)(1), substituted “Award of certain contracts to entities controlled by a foreign government: prohibition” for “Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government.” as section catchline.

Pub. L. 103-35 struck out period at end of section catchline.

Subsec. (a). Pub. L. 103-160, §842(a), struck out “a company owned by” after “awarded to” and substituted “that entity” for “that company”.

Subsec. (c)(1). Pub. L. 103-160, §842(b), inserted at end “Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.”

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. 102-484, div. A, title VIII, §836(b), Oct. 23, 1992, 106 Stat. 2463, provided that: “Section 2536 of title 10,