

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,

United States Code [now 10 U.S.C. 4874], as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].”

REMOVAL OF NATIONAL INTEREST DETERMINATION REQUIREMENTS FOR CERTAIN ENTITIES

Pub. L. 115-232, div. A, title VIII, §842, Aug. 13, 2018, 132 Stat. 1878, provided that:

“(a) IN GENERAL.—Effective October 1, 2020, a covered NTIB entity operating under a special security agreement pursuant to the National Industrial Security Program shall not be required to obtain a national interest determination as a condition for access to proscribed information.

“(b) ACCELERATION AUTHORIZED.—Notwithstanding the effective date of this section, the Secretary of Defense, in consultation with the Director of the Information Security Oversight Office, may waive the requirement to obtain a national interest determination for a covered NTIB entity operating under such a special security agreement that has—

“(1) a demonstrated successful record of compliance with the National Industrial Security Program; and

“(2) previously been approved for access to proscribed information.

“(c) DEFINITIONS.—In this section:

“(1) COVERED NTIB ENTITY.—The term ‘covered NTIB entity’ means a person that is a subsidiary located in the United States—

“(A) for which the ultimate parent company and any intermediate parent companies of such subsidiary are located in a country that is part of the national technology and industrial base (as defined in section 2500 of title 10, United States Code [now 10 U.S.C. 4801]); and

“(B) that is subject to the foreign ownership, control, or influence requirements of the National Industrial Security Program.

“(2) PROSCRIBED INFORMATION.—The term ‘proscribed information’ means information that is—

“(A) classified at the level of top secret;

“(B) communications security information (excluding controlled cryptographic items when unkeyed or utilized with unclassified keys);

“(C) restricted data (as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014));

“(D) special access program information under section 4.3 of Executive Order No. 13526 (75 Fed. Reg. 707; 50 U.S.C. 3161 note) or successor order; or

“(E) designated as sensitive compartmented information.”

REVIEW REGARDING APPLICABILITY OF FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE REQUIREMENTS OF NATIONAL INDUSTRIAL SECURITY PROGRAM TO NATIONAL TECHNOLOGY AND INDUSTRIAL BASE COMPANIES

Pub. L. 115-91, div. A, title XVII, §1712, Dec. 12, 2017, 131 Stat. 1811, as amended by Pub. L. 116-283, div. A, title XVIII, §1866(d)(5), Jan. 1, 2021, 134 Stat. 4280, provided that:

“(a) REVIEW.—The Secretary of Defense, with the concurrence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, shall review whether organizations whose ownership or majority control is based in a country that is part of the national technology and industrial base should be exempted from one or more of the foreign ownership, control, or influence requirements of the National Industrial Security Program.

“(b) AUTHORITY.—The Secretary of Defense may establish a program to exempt organizations described under subsection (a) from one or more of the foreign ownership, control, or influence requirements of the National Industrial Security Program. Any such program shall comply with the requirements of this subsection.

“(1) IN GENERAL.—Under a program established under this subsection, the Secretary, with the con-

currence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, shall maintain a list of organizations owned or controlled by a country that is part of the national technology and industrial base that are eligible for exemption from the requirements described under such subsection.

“(2) DETERMINATIONS OF ELIGIBILITY.—Under a program established under this subsection, the Secretary of Defense, with the concurrence of the Secretary of State and after consultation with the Director of the Information Security Oversight Office, may (on a case-by-case basis and for the purpose of supporting specific needs of the Department of Defense) designate an organization whose ownership or majority control is based in a country that is part of the national technology and industrial base as exempt from the requirements described under subsection (a) upon a determination that such exemption—

“(A) is beneficial to improving collaboration within countries that are a part of the national technology and industrial base;

“(B) is in the national security interest of the United States; and

“(C) will not result in a greater risk of the disclosure of classified or sensitive information consistent with the National Industrial Security Program.

“(3) EXERCISE OF AUTHORITY.—The authority under this subsection may be exercised beginning on the date that is the later of—

“(A) the date that is 60 days after the Secretary of Defense, in consultation with the Secretary of State and the Director of the Information Security Oversight Office, submits to the appropriate congressional committees a report summarizing the review conducted under subsection (a); and

“(B) the date that is 30 days after the Secretary of Defense, in consultation with the Secretary of State and the Director of the Information Security Oversight Office, submits to the appropriate congressional committees a written notification of a determination made under paragraph (2), including a discussion of the issues related to the foreign ownership or control of the organization that were considered as part of the determination.

“(c) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ has the meaning given the term in section 301 of title 10, United States Code.

“(2) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—the [sic] term ‘national technology and industrial base’ has the meaning given the term in section 4801 of title 10, United States Code.”

§ 4875. Prohibition on acquisition of personal protective equipment and certain other items from non-allied foreign nations

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense may not procure any covered item from any covered nation.

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

(c) EXCEPTIONS.—

(1) IN GENERAL.—Subsection (a) does not apply under the following circumstances:

(A) 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 from nations other than covered nations to meet requirements at a reasonable price.

(B) The procurement of a covered item for use outside of the United States.

(C) Purchases for amounts not greater than \$150,000.