

title 48, Code of Federal Regulations, or any successor thereto.

**(3)<sup>1</sup> Waivers**

**(A) In general**

Subject to subparagraph (B), in individual cases, the requirements under section 204 of title 35 may be waived by the Secretary upon a showing by the small business firm, non-profit organization, or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(B) Conditions on waivers granted by Department**

**(i) Before grant of waiver**

Before granting a waiver under subparagraph (A), the Secretary shall comply with the procedures developed and implemented by the Department pursuant to section 70923(b)(2) of the Build America, Buy America Act (enacted as subtitle A of title IX of division G of Public Law 117-58).

**(ii) Prohibition on granting certain waivers**

The Secretary may not grant a waiver under subparagraph (A) if, as a result of such waiver, products embodying the applicable subject invention, or produced through the use of the applicable subject invention, would be manufactured substantially in a country of concern.

(Pub. L. 107-296, title III, §308, Nov. 25, 2002, 116 Stat. 2170; Pub. L. 108-7, div. L, §101(1), Feb. 20, 2003, 117 Stat. 526; Pub. L. 117-263, div. G, title LXXI, §7114, Dec. 23, 2022, 136 Stat. 3633.)

**Editorial Notes**

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (b)(2)(D), probably means the date of enactment of this section by Pub. L. 107-296, which was approved Nov. 25, 2002.

Section 70923(b)(2) of the Build America, Buy America Act, referred to in subsec. (d)(3)(B)(i), is section 70923(b)(2) of Pub. L. 117-58, div. G, title IX, Nov. 15, 2021, 135 Stat. 1306, which is not classified to the Code.

AMENDMENTS

2022—Subsec. (d). Pub. L. 117-263 added subsec. (d).

2003—Subsecs. (a) to (c)(1). Pub. L. 108-7 added subsecs. (a) to (c)(1) and struck out former subsecs. (a) to (c)(1) which related to the responsibilities of the Secretary, acting through the Under Secretary for Science and Technology, to carry out the responsibilities under section 182(4) of this title through both extramural and intramural programs, to operate extramural research, development, demonstration, testing, and evaluation programs, to establish a coordinated, university-based system to enhance the Nation's homeland security, and to draw upon the expertise of any laboratory of the Federal Government.

<sup>1</sup> So in original. There is no par. (2).

**§ 189. Utilization of Department of Energy national laboratories and sites in support of homeland security activities**

**(a) Authority to utilize national laboratories and sites**

**(1) In general**

In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any “work for others” basis made available by that laboratory or site.

(D) Any other method provided by law.

**(2) Acceptance and performance by labs and sites**

Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

**(b) Joint sponsorship arrangements**

**(1) Laboratories**

The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

**(2) Sites**

The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

**(3) Primary sponsor**

The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

**(4) Lead agent**

The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

**(5) Federal Acquisition Regulation**

Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

**(6) Funding**

The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 3303(a)(1)(C) of title 41 or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

**(c) Separate contracting**

To the extent that programs or activities transferred by this chapter from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

**(d) Authority with respect to cooperative research and development agreements and licensing agreements**

In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 3710a of title 15. Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 3710 and 3710a of title 15.

**(e) Reimbursement of costs**

In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

**(f) Laboratory directed research and development by the Department of Energy**

No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

**(g) Office for National Laboratories**

There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

**(h) Department of Energy coordination on homeland security related research**

The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

(Pub. L. 107-296, title III, § 309, Nov. 25, 2002, 116 Stat. 2172.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

## CODIFICATION

In subsec. (b)(6), “section 3303(a)(1)(C) of title 41” substituted for “section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)(1)(C))” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

**Statutory Notes and Related Subsidiaries**

## SECURING ENERGY INFRASTRUCTURE

Pub. L. 116-92, div. E, title LVII, § 5726, Dec. 20, 2019, 133 Stat. 2179, provided that:

“(a) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the congressional intelligence committees [Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives];

“(B) the Committee on Homeland Security and Governmental Affairs and the Committee on Energy and Natural Resources of the Senate; and

“(C) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

“(2) COVERED ENTITY.—The term ‘covered entity’ means an entity identified pursuant to section 9(a) of Executive Order No. 13636 of February 12, 2013 (78 Fed. Reg. 11742) [6 U.S.C. 121 note], relating to identification of critical infrastructure where a cybersecurity incident could reasonably result in catastrophic regional or national effects on public health or safety, economic security, or national security.

“(3) EXPLOIT.—The term ‘exploit’ means a software tool designed to take advantage of a security vulnerability.

“(4) INDUSTRIAL CONTROL SYSTEM.—The term ‘industrial control system’ means an operational technology used to measure, control, or manage industrial functions, and includes supervisory control and

data acquisition systems, distributed control systems, and programmable logic or embedded controllers.

“(5) NATIONAL LABORATORY.—The term ‘National Laboratory’ has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

“(6) PROGRAM.—The term ‘Program’ means the pilot program established under subsection (b).

“(7) SECRETARY.—Except as otherwise specifically provided, the term ‘Secretary’ means the Secretary of Energy.

“(8) SECURITY VULNERABILITY.—The term ‘security vulnerability’ means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

“(b) PILOT PROGRAM FOR SECURING ENERGY INFRASTRUCTURE.—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary shall establish a 2-year control systems implementation pilot program within the National Laboratories for the purposes of—

“(1) partnering with covered entities in the energy sector (including critical component manufacturers in the supply chain) that voluntarily participate in the Program to identify new classes of security vulnerabilities of the covered entities; and

“(2) evaluating technology and standards, in partnership with covered entities, to isolate and defend industrial control systems of covered entities from security vulnerabilities and exploits in the most critical systems of the covered entities, including—

“(A) analog and nondigital control systems;

“(B) purpose-built control systems; and

“(C) physical controls.

“(c) WORKING GROUP TO EVALUATE PROGRAM STANDARDS AND DEVELOP STRATEGY.—

“(1) ESTABLISHMENT.—The Secretary shall establish a working group—

“(A) to evaluate the technology and standards used in the Program under subsection (b)(2); and

“(B) to develop a national cyber-informed engineering strategy to isolate and defend covered entities from security vulnerabilities and exploits in the most critical systems of the covered entities.

“(2) MEMBERSHIP.—The working group established under paragraph (1) shall be composed of not fewer than 10 members, to be appointed by the Secretary, at least 1 member of which shall represent each of the following:

“(A) The Department of Energy.

“(B) The energy industry, including electric utilities and manufacturers recommended by the Energy Sector coordinating councils.

“(C)(i) The Department of Homeland Security; or  
“(ii) the Industrial Control Systems Cyber Emergency Response Team.

“(D) The North American Electric Reliability Corporation.

“(E) The Nuclear Regulatory Commission.

“(F)(i) The Office of the Director of National Intelligence; or

“(ii) the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)).

“(G)(i) The Department of Defense; or

“(ii) the Assistant Secretary of Defense for Homeland Security and America’s Security Affairs.

“(H) A State or regional energy agency.

“(I) A national research body or academic institution.

“(J) The National Laboratories.

“(d) REPORTS ON THE PROGRAM.—

“(1) INTERIM REPORT.—Not later than 180 days after the date on which funds are first disbursed under the Program, the Secretary shall submit to the appropriate congressional committees an interim report that—

“(A) describes the results of the Program;

“(B) includes an analysis of the feasibility of each method studied under the Program; and

“(C) describes the results of the evaluations conducted by the working group established under subsection (c)(1).

“(2) FINAL REPORT.—Not later than 2 years after the date on which funds are first disbursed under the Program, the Secretary shall submit to the appropriate congressional committees a final report that—

“(A) describes the results of the Program;

“(B) includes an analysis of the feasibility of each method studied under the Program; and

“(C) describes the results of the evaluations conducted by the working group established under subsection (c)(1).

“(e) EXEMPTION FROM DISCLOSURE.—Information shared by or with the Federal Government or a State, Tribal, or local government under this section—

“(1) shall be deemed to be voluntarily shared information;

“(2) shall be exempt from disclosure under section 552 of title 5, United States Code, or any provision of any State, Tribal, or local freedom of information law, open government law, open meetings law, open records law, sunshine law, or similar law requiring the disclosure of information or records; and

“(3) shall be withheld from the public, without discretion, under section 552(b)(3) of title 5, United States Code, and any provision of any State, Tribal, or local law requiring the disclosure of information or records.

“(f) PROTECTION FROM LIABILITY.—

“(1) IN GENERAL.—A cause of action against a covered entity for engaging in the voluntary activities authorized under subsection (b)—

“(A) shall not lie or be maintained in any court; and

“(B) shall be promptly dismissed by the applicable court.

“(2) VOLUNTARY ACTIVITIES.—Nothing in this section subjects any covered entity to liability for not engaging in the voluntary activities authorized under subsection (b).

“(g) NO NEW REGULATORY AUTHORITY FOR FEDERAL AGENCIES.—Nothing in this section authorizes the Secretary or the head of any other department or agency of the Federal Government to issue new regulations.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) PILOT PROGRAM.—There is authorized to be appropriated \$10,000,000 to carry out subsection (b).

“(2) WORKING GROUP AND REPORT.—There is authorized to be appropriated \$1,500,000 to carry out subsections (c) and (d).

“(3) AVAILABILITY.—Amounts made available under paragraphs (1) and (2) shall remain available until expended.”

## § 190. Transfer of Plum Island Animal Disease Center, Department of Agriculture

### (a) In general

In accordance with subchapter XII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

### (b) Continued Department of Agriculture access

On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

### (c) Direction of activities

The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activi-