

such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

“(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

“(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.”

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the

transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

- (i) storage of such property;
- (ii) repair and maintenance of such property; and
- (iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term “Defense Industrial Reserve” means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term “plant equipment package” means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102-484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103-35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103-337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107-107, div. A, title X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107-217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295.)

CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102-484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102-484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99-661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102-484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617.

AMENDMENTS

2002—Subsec. (b)(1)(G). Pub. L. 107-217 substituted “chapter 5 of title 40” for “title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)”.

2001—Subsec. (a). Pub. L. 107-107, § 1048(a)(23)(A)(i), substituted “intent of Congress—” for “intent of Congress” in introductory provisions.

Subsec. (a)(1). Pub. L. 107-107, § 1048(a)(23)(A)(ii), (iii), substituted “armed forces” for “Armed Forces” and realigned margins.

Subsec. (a)(2) to (4). Pub. L. 107-107, § 1048(a)(23)(A)(ii), realigned margins.

Subsec. (b)(1). Pub. L. 107-107, § 1048(a)(23)(B)(i), substituted “in subsection (a), the Secretary of Defense shall—” for “in this section, the Secretary is authorized and directed to—” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 107-107, § 1048(a)(23)(B)(ii), substituted “Defense Industrial Reserve” for “defense industrial reserve”.

Subsec. (c). Pub. L. 107-107, § 1048(a)(23)(C), redesignated par. (2) as (1), substituted “means—” for “means” in introductory provisions, realigned margins of subpars. (A) to (C) of par. (1) and inserted “and” after semicolon in subpar. (B), redesignated par. (3) as (2), and struck out former par. (1) which read as follows: “The term ‘Secretary’ means Secretary of Defense.”

1994—Subsec. (b)(1)(G). Pub. L. 103-337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: “authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.”

1993—Subsec. (b)(2)(B). Pub. L. 103-35 substituted “subparagraph (A)” for “paragraph (1)”.

1992—Pub. L. 102-484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102-484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted “It” for “In enacting this chapter it” in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102-484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted “in this section” for “in this chapter” in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102-484, § 4235(b), transferred the text of section 452 of Title 50, War and National De-

fense, to the end of this section, designated it subsec. (c), inserted heading, and substituted “In this section:” for “As used in this chapter—” in introductory provisions. See Codification note above.

TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Pub. L. 103-337, div. A, title III, § 379(b), Oct. 5, 1994, 108 Stat. 2737, provided that: “Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or training school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.”

§ 2536. 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—