

(c) EXCEPTIONS.—Subsection (a) does not apply under the following circumstances:

(1) 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 at a reasonable price.

(2) To the procurement of an end item described in subsection (a)(1) or the sale of any covered material described under subsection (a)(1) by the Secretary outside of the United States for use outside of the United States.

(3) To the purchase by the Secretary of an end item containing a covered material that is—

(A) a commercially available off-the-shelf item (as defined in section 104 of title 41), other than—

(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED MATERIAL.—The term “covered material” means—

(A) samarium-cobalt magnets;

(B) neodymium-iron-boron magnets;

(C) tungsten metal powder;

(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy; and

(E) tantalum metals and alloys.

(2) 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.

(3) END ITEM.—The term “end item” has the meaning given in section 2533b(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, § 871(a), Aug. 13, 2018, 132 Stat. 1904; amended Pub. L. 116–92, div. A, title VIII, § 849, Dec. 20, 2019, 133 Stat. 1508.)

AMENDMENTS

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).

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) COMPONENTS FOR NAVAL VESSELS.—(A) The following components:

(i) Air circuit breakers.

(ii) Welded shipboard anchor and mooring chain with a diameter of four inches or less.

(iii) Vessel propellers with a diameter of six feet or more.

(B) The following components of vessels, to the extent they are unique to marine applications: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, and totally enclosed lifeboats.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992, except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer.

(6) COMPONENTS FOR AUXILIARY SHIPS.—Subject to subsection (k),¹ large medium-speed diesel engines.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

¹ So in original. Probably means the subsec. (k) enacted by Pub. L. 116–92, related to implementation of auxiliary ship component limitation. See 2019 Amendment note below.

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(3) MANUFACTURER OF VESSEL PROPELLERS.—In the case of a procurement of vessel propellers referred to in subsection (a)(3)(A)(iii), the manufacturer of the propellers meets the requirements of this subsection only if—

(A) the manufacturer meets the requirements set forth in paragraph (1); and

(B) all castings incorporated into such propellers are poured and finished in the United States.

(c) APPLICABILITY TO CERTAIN ITEMS.—

(1) COMPONENTS FOR NAVAL VESSELS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 2005.

(4) VESSEL PROPELLERS.—Subsection (a)(3)(A)(iii) and this paragraph shall cease to be effective on February 10, 1998.

(5) CHEMICAL WEAPONS ANTIDOTE.—Subsections (a)(2) and (b)(2) shall cease to be effective on October 1, 2018.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from

a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term “United States firm” has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—(1) This sec-

tion does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(2) Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings and roller bearings), notwithstanding section 1905 of title 41.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(3)(B), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(i) IMPLEMENTATION OF CERTAIN WAIVER AUTHORITY.—(1) The Secretary of Defense may exercise the waiver authority described in paragraph (2) only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country.

(2) This subsection applies to the waiver authority provided by subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection.

(3) The waiver authority described in paragraph (2) may not be delegated below the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(4) At least 15 days before the effective date of any waiver made under the waiver authority described in paragraph (2), the Secretary shall publish in the Federal Register and submit to the congressional defense committees a notice of the determination to exercise the waiver authority.

(5) Any waiver made by the Secretary under the waiver authority described in paragraph (2) shall be in effect for a period not greater than one year, as determined by the Secretary.

(j) INAPPLICABILITY TO CERTAIN CONTRACTS TO PURCHASE BALL BEARINGS OR ROLLER BEARINGS.—(1) This section does not apply with respect to a contract or subcontract to purchase items described in subsection (a)(5) (relating to ball bearings and roller bearings) for which—

(A) the amount of the purchase does not exceed \$2,500;

(B) the precision level of the ball or roller bearings to be procured under the contract or subcontract is rated lower than the rating known as Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or an equivalent of such rating;

(C) at least two manufacturers in the national technology and industrial base that are capable of producing the ball or roller bearings have not responded to a request for quotation issued by the contracting activity for that contract or subcontract; and

(D) no bearing to be procured under the contract or subcontract has a basic outside diameter (exclusive of flange diameters) in excess of 30 millimeters.

(2) Paragraph (1) does not apply to a purchase if such purchase would result in the total amount of purchases of ball bearings and roller

bearings to satisfy requirements under Department of Defense contracts, using the authority provided in such paragraph, to exceed \$200,000 during the fiscal year of such purchase.

(k)² LIMITATION ON CERTAIN PROCUREMENTS APPLICATION PROCESS.—

(1) IN GENERAL.—The Secretary of Defense shall administer a process to analyze and assess potential items for consideration to be required to be procured from a manufacturer that is part of the national technology and industrial base.

(2) ELEMENTS.—The application process required under paragraph (1) shall include the following elements:

(A) The Secretary shall designate an official within the Office of the Secretary of Defense responsible for administration of the limitation on certain procurements application process and associated policy.

(B) A person or organization that meets the definition of national technology and industrial base under section 2500(1) of this title shall have the opportunity to apply for status as an item required to be procured from a manufacturer that is part of the national technology and industrial base. The application shall include, at a minimum, the following information:

(i) Information demonstrating the applicant meets the criteria of a manufacturer in the national technology and industrial base under section 2500(1) of this title.

(ii) For each item the applicant seeks to be required to be procured from a manufacturer that is part of the national technology and industrial base, the applicant shall include the following information:

(I) The extent to which such item has commercial applications.

(II) The number of such items to be procured by current programs of record.

(III) The criticality of such item to a military unit's mission accomplishment.

(IV) The estimated cost and other considerations of reconstituting the manufacturing capability of such item, if not maintained in the national technology and industrial base.

(V) National security regulations or restrictions imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VI) Non-national security-related Federal, State, and local government regulations imposed on such item that may not be imposed on a non-national technology and industrial base competitor.

(VII) The extent to which such item is fielded in current programs of record.

(VIII) The extent to which cost and pricing data for such item has been deemed fair and reasonable.

(3) CONSIDERATION OF APPLICATIONS.—

(A) RESPONSIBILITY OF DESIGNATED OFFICIAL.—The official designated pursuant to

² So in original. Two subsecs. (k) have been enacted.

paragraph (2)(A) shall be responsible for providing complete applications submitted pursuant to this subsection to the appropriate component acquisition executive for consideration not later than 15 days after receipt of such application.

(B) REVIEW.—Not later than 120 days after receiving a complete application, the component acquisition executive shall review such application, make a determination, and return the application to the official designated pursuant to paragraph (2)(A).

(C) ELEMENTS OF DETERMINATION.—The determination required under subparagraph (B) shall, for each item proposed pursuant to paragraph (2)(B)(ii)—

- (i) recommend inclusion under this section;
- (ii) recommend inclusion under this section with further modifications; or
- (iii) not recommend inclusion under this section.

(D) JUSTIFICATION.—The determination required under subparagraph (B) shall also include the rationale and justification for the determination.

(4) RECOMMENDATIONS FOR LEGISLATION.—For applications recommended under subsection (3), the official designated pursuant to paragraph (2)(A) shall be responsible for preparing a legislative proposal for consideration by the Secretary.

(k)² IMPLEMENTATION OF AUXILIARY SHIP COMPONENT LIMITATION.—Subsection (a)(6) applies only with respect to contracts awarded by the Secretary of a military department for new construction of an auxiliary ship after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020 using funds available for National Defense Sealift Fund programs or Shipbuilding and Conversion, Navy. For purposes of this subsection, the term “auxiliary ship” does not include an icebreaker or a special mission ship.

(Added Pub. L. 97–295, §1(29)(A), Oct. 12, 1982, 96 Stat. 1294, §2400; amended Pub. L. 100–180, div. A, title I, §124(a), (b)(1), title VIII, §824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered §2502 and amended Pub. L. 100–370, §3(b)(1), July 19, 1988, 102 Stat. 855; renumbered §2507 and amended Pub. L. 100–456, div. A, title VIII, §§821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, §835(a), title XIV, §1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered §2534 and amended Pub. L. 102–484, div. A, title VIII, §§831, 833(a), title X, §1052(33), div. D, title XLII, §§4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, §814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, §4102(i), Oct. 13, 1994, 108 Stat. 3341; Pub. L. 104–106, div. A, title VIII, §806(a)(1)–(4), (b)–(d), title XV, §1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 391, 512; Pub. L. 104–201, div. A, title VIII, §810, title X, §1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; Pub. L. 105–85, div. A, title III, §371(d)(1), title VIII, §811(a), title X, §1073(a)(55), Nov. 18, 1997,

111 Stat. 1706, 1839, 1903; Pub. L. 106–398, §1 [[div. A], title VIII, §805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 107–107, div. A, title VIII, §835(a), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1191, 1225; Pub. L. 108–136, div. A, title VIII, §828, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 111–350, §5(b)(40), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 115–91, div. A, title VIII, §813(a), Dec. 12, 2017, 131 Stat. 1461; Pub. L. 115–232, div. A, title VIII, §844(a), Aug. 13, 2018, 132 Stat. 1879; Pub. L. 116–92, div. A, title VIII, §853, Dec. 20, 2019, 133 Stat. 1511.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2400	10:2303 (note).	Sept. 20, 1968, Pub. L. 90–500, §404, 82 Stat. 851.

The words “of the United States under the provisions of this Act or the provisions of any other law” are omitted as surplus. The word “acquisition” is substituted for “purchase, lease, rental, or other acquisition” because it is inclusive. The words “this section” are substituted for “this prohibition” because of the restatement.

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (k), is the date of enactment of Pub. L. 116–92, which was approved Dec. 20, 2019.

AMENDMENTS

- 2019—Subsec. (a)(6). Pub. L. 116–92, §853(a), added par. (6).
- Subsec. (k). Pub. L. 116–92, §853(b), added subsec. (k) related to implementation of auxiliary ship component limitation.
- 2018—Subsec. (k). Pub. L. 115–232 added subsec. (k) related to limitation on certain procurements application process.
- 2017—Subsec. (c)(5). Pub. L. 115–91 added par. (5).
- 2011—Subsec. (g)(2). Pub. L. 111–350 substituted “section 1905 of title 41” for “section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429)”.
- 2003—Subsec. (a)(5). Pub. L. 108–136 inserted before period at end “, except ball bearings and roller bearings being procured for use in an end product manufactured by a manufacturer that does not satisfy the requirements of subsection (b) or in a component part manufactured by such a manufacturer”.
- 2001—Subsec. (i)(3). Pub. L. 107–107, §1048(b)(2), substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.
- Subsec. (j). Pub. L. 107–107, §835(a), added subsec. (j).
- 2000—Subsec. (c)(3). Pub. L. 106–398 substituted “October 1, 2005” for “October 1, 2000”.
- 1997—Subsec. (b)(3). Pub. L. 105–85, §1073(a)(55), substituted “(a)(3)(A)(iii)” for “(a)(3)(A)(ii)”.
- Subsec. (d)(4), (5). Pub. L. 105–85, §371(d)(1), substituted “section 2500(1)” for “section 2491(1)”.
- Subsec. (i). Pub. L. 105–85, §811(a), added subsec. (i).
- 1996—Subsec. (a)(3). Pub. L. 104–106, §806(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “AIR CIRCUIT BREAKERS.—Air circuit breakers for naval vessels.”
- Subsec. (b)(3). Pub. L. 104–106, §806(a)(2), added par. (3).
- Subsec. (c). Pub. L. 104–106, §1503(a)(30), substituted “CERTAIN ITEMS” for “CERTAIN ITEMS” in heading.
- Subsec. (c)(1). Pub. L. 104–106, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “AIR CIRCUIT BREAKERS.—Subsection (a) does not apply to a procurement of spares or repair parts needed to support air circuit breakers produced or manufactured outside the United States.”

Subsec. (c)(3). Pub. L. 104-106, §806(b), substituted “October 1, 2000” for “October 1, 1995”.

Subsec. (c)(4). Pub. L. 104-201, §1074(a)(14), substituted “February 10, 1998” for “the date occurring two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996”.

Pub. L. 104-106, §806(c), added par. (4).

Subsec. (d)(3). Pub. L. 104-201, §810, inserted “or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title,” after “a foreign country,”.

Subsec. (g). Pub. L. 104-106, §806(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 104-106, §806(a)(4), added subsec. (h).

1994—Pub. L. 103-337 amended section generally. Prior to amendment, section consisted of subssecs. (a) to (f) relating to acquisition of multipassenger motor vehicles, chemical weapons antidote, valves and machine tools, carbonyl iron powders, air circuit breakers, and sonobuoys.

Subsec. (g). Pub. L. 103-355 added subsec. (g).

1993—Subsec. (b)(2). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1992—Pub. L. 102-484, §§4202(a), 4271(b)(4), renumbered section 2507 of this title as this section and substituted “Miscellaneous limitations on the procurement of goods other than United States goods” for “Miscellaneous procurement limitations” in section catchline.

Subsec. (c). Pub. L. 102-484, §831, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “MANUAL TYPEWRITERS FROM WARSAW PACT COUNTRIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most-favored-nation treatment).”

Subsec. (d). Pub. L. 102-484, §831(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3)(A). Pub. L. 102-484, §1052(33), substituted “Government-owned” for “government-owned”.

Subsec. (e). Pub. L. 102-484, §831(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102-484, §833(a), added subsec. (f). Former subsec. (f) redesignated (e).

1991—Subsec. (d)(1). Pub. L. 102-190, §834(a), substituted “Effective through fiscal year 1996” for “During fiscal years 1989, 1990, and 1991”.

Subsec. (d)(3) to (5). Pub. L. 102-190, §834(b), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out former par. (4) which read as follows: “The provisions of this section may be renewed with respect to any item by the Secretary of Defense at the end of fiscal year 1991 for an additional two fiscal years if the Secretary determines that a continued restriction on that item is in the national security interest.”

Subsec. (e)(1). Pub. L. 102-190, §835(1), substituted “Until January 1, 1993, the Secretary” for “The Secretary”.

Subsec. (e)(3). Pub. L. 102-190, §835(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “After September 30, 1994, the Secretary may terminate the restriction required under paragraph (1) if the Secretary determines that continuing the restriction is not in the national interest.”

Subsec. (e)(3)(A). Pub. L. 102-190, §835(3), struck out before period “by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada”.

Subsec. (e)(4). Pub. L. 102-190, §835(4), redesignated par. (4) as (3).

1990—Subsec. (e). Pub. L. 101-510, §835(a), added subsec. (e).

Subsec. (f). Pub. L. 101-510, §1421, added subsec. (f).

1988—Pub. L. 100-370, and Pub. L. 100-456, §821(b)(1)(A), successively renumbered section 2400 of this title as section 2502 of this title and then as this section.

Subsec. (a). Pub. L. 100-370 substituted “this subsection” for “this section”.

Subsec. (d). Pub. L. 100-456, §822, added subsec. (d).

1987—Pub. L. 100-180 substituted “Miscellaneous procurement limitations” for “Limitation on procurement of buses” in section catchline, designated existing provisions as subsec. (a) and added heading, and added subssecs. (b) and (c).

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title VIII, §844(b), Aug. 13, 2018, 132 Stat. 1881, as amended by Pub. L. 116-92, div. A, title XVII, §1731(b)(2), Dec. 20, 2019, 133 Stat. 1816, provided that: “The amendment made by subsection (a) [amending this section] shall take effect one year after the date of the enactment of this Act [Aug. 13, 2018].”

[Pub. L. 116-92, div. A, title XVII, §1731(b), Dec. 20, 2019, 133 Stat. 1816, provided that the amendment made by section 1731(b)(2) to section 844(b) of Pub. L. 115-232, set out above, is effective Aug. 13, 2018, and as if included in Pub. L. 115-232 as enacted.]

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title VIII, §835(b), Dec. 28, 2001, 115 Stat. 1192, provided that: “Subsection (j) of such section 2534 (as added by subsection (a)) shall apply with respect to a contract or subcontract to purchase ball bearings or roller bearings entered into after the date of the enactment of this Act [Dec. 28, 2001].”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-85, div. A, title VIII, §811(b), Nov. 18, 1997, 111 Stat. 1840, provided that: “Subsection (i) of section 2534 of such title [10 U.S.C. 2534(i)], as added by subsection (a), shall apply with respect to—

“(1) contracts and subcontracts entered into on or after the date of the enactment of this Act [Nov. 18, 1997]; and

“(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (d) of such section 2534, on the basis of the applicability of paragraph (2) or (3) of that subsection.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title VIII, §806(a)(5), Feb. 10, 1996, 110 Stat. 391, provided that: “Subsection (a)(3)(B) of section 2534 of title 10, United States Code, as amended by paragraph (1), shall apply only to contracts entered into after March 31, 1996.”

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title VIII, §833(b), Oct. 23, 1992, 106 Stat. 2461, provided that: “Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), shall apply with respect to solicitations for contracts issued after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-510, div. A, title VIII, §835(b), Nov. 5, 1990, 104 Stat. 1615, provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101-510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

PROCUREMENT OF PHOTOVOLTAIC DEVICES

Pub. L. 113-291, div. A, title VIII, §858, Dec. 19, 2014, 128 Stat. 3460, which required certain contracts to include a provision relating to the manufacturing of photovoltaic devices in the United States, was repealed by Pub. L. 115-91, div. A, title VIII, §813(b), Dec. 12, 2017, 131 Stat. 1461, effective Oct. 1, 2018.

Pub. L. 111-383, div. A, title VIII, §846, Jan. 7, 2011, 124 Stat. 4285, as amended by Pub. L. 113-291, div. A, title X, §1071(b)(1)(A), Dec. 19, 2014, 128 Stat. 3505, provided that:

“(a) CONTRACT REQUIREMENT.—The Secretary of Defense shall ensure that each contract described in subsection (b) awarded by the Department of Defense includes a provision requiring the photovoltaic devices provided under the contract to comply with chapter 83 of title 41, United States Code, subject to the exceptions to that chapter provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) or otherwise provided by law.

“(b) CONTRACTS DESCRIBED.—The contracts described in this subsection include energy savings performance contracts, utility service contracts, land leases, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by the Department of Defense. For the purposes of this section, the Department of Defense is deemed to own a photovoltaic device if the device is—

“(1) installed on Department of Defense property or in a facility owned by the Department of Defense; and

“(2) reserved for the exclusive use of the Department of Defense for the full economic life of the device.

“(c) DEFINITION OF PHOTOVOLTAIC DEVICES.—In this section, the term ‘photovoltaic devices’ means devices that convert light directly into electricity through a solid-state, semiconductor process.”

ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108-136, div. A, title VIII, §821, Nov. 24, 2003, 117 Stat. 1546, provided that:

“(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

“(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

“(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense’s need for the item is of 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—