

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—

(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; 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.)

AMENDMENTS

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.”

EFFECTIVE DATE OF 1992 AMENDMENT

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, 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 Pro-

gram 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); 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, 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 concurrence 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 na-

tional 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 2500 of title 10, United States Code.”

§ 2537. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding \$10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a) of the Defense Production Act of 1950 (50 U.S.C. 4565(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.