

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.

(D) The Air Force Foreign Aerospace Science and Technology Center.

(Added Pub. L. 102-484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended Pub. L. 103-35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100; Pub. L. 107-314, div. A, title X, § 1041(a)(16), Dec. 2, 2002, 116 Stat. 2645; Pub. L. 114-328, div. A, title X, § 1081(b)(4)(B), Dec. 23, 2016, 130 Stat. 2419; Pub. L. 115-91, div. A, title X, § 1051(a)(19), Dec. 12, 2017, 131 Stat. 1561.)

AMENDMENTS

2017—Subsecs. (b), (c). Pub. L. 115-91 redesignated subsec. (c) as (b) and struck out former subsec. (b) which required annual reports to Congress regarding the information collected under subsec. (a).

2016—Subsec. (c). Pub. L. 114-328 substituted “(50 U.S.C. 4565(a))” for “(50 U.S.C. App. 2170(a))”.

2002—Subsec. (a). Pub. L. 107-314 substituted “\$10,000,000” for “\$100,000”.

1993—Subsec. (a). Pub. L. 103-35, § 201(d)(5), substituted “respectively, that” for “respectively, which”.

Subsec. (d). Pub. L. 103-35, § 201(h)(2), struck out subsec. (d) which read as follows: “In this section, the term ‘defense critical technology’ has the meaning provided that term by section 2491(8) of this title.”

§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair

and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103-160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended Pub. L. 103-337, div. A, title VIII, § 811, Oct. 5, 1994, 108 Stat. 2815.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4501 and 9501 of this title, prior to repeal by Pub. L. 103-160, § 822(a)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-337, § 811(1), substituted “head of any department” for “Secretary of Defense”.

Subsec. (c). Pub. L. 103-337, § 811, substituted “through the head of any department” for “through the Secretary of Defense” and “opinion of the head of that department” for “opinion of the Secretary of Defense” in introductory provisions and “head of such department” for “Secretary” in pars. (2) and (3).

Subsec. (d). Pub. L. 103-337, § 811(1), substituted “head of any department” for “Secretary of Defense”.

§ 2539. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103-160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(a)-(c) and 9502(a)-(c) of this title, prior to repeal by Pub. L. 103-160, § 822(a)(2).

§ 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential