

*vided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 363 of this title, as amended by section 1862(a) of Pub. L. 116–283, inserted after section 4656, and redesignated as section 4657 of this title. See Effective Date of 2021 Amendment note below.*

#### REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B of title XI of div. A of Pub. L. 116–92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(I), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 2339, added Pub. L. 114–328, div. A, title II, §217(a)(1), Dec. 23, 2016, 130 Stat. 2051, set the micro-purchase threshold for basic research programs and activities of the Department of Defense science and technology reinvention laboratories, prior to repeal by Pub. L. 115–232, div. A, title VIII, §821(c)(1), Aug. 13, 2018, 132 Stat. 1853.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE

Pub. L. 116–92, div. A, title XI, §1123(b)(2), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, §1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4278, provided that: “Section 2339(a) of title 10, United States Code, as added by paragraph (1), shall apply with respect to contracts awarded pursuant to solicitations issued after the effective date described in section 1122(b)(2) of this subtitle [2 years after Dec. 20, 2019, see Effective Date note set out under section 9202 of Title 5, Government Organization and Employees].”

*[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1862(c)(3)(A), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(b)(2) of Pub. L. 116–92, set out above, is amended by substituting “Section 4657(a)” for “Section 2339(a)”.]*

#### REVISIONS TO FEDERAL ACQUISITION REGULATION

Pub. L. 116–92, div. A, title XI, §1123(c), Dec. 20, 2019, 133 Stat. 1614, as amended by Pub. L. 116–283, div. A, title XVIII, §1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4278, provided that:

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this subtitle [Dec. 20, 2019], the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation to implement section 4714 of title 41, United States Code, and section 2339 of title 10, United States Code, as added by this section.

“(2) CONSISTENCY WITH OFFICE OF PERSONNEL MANAGEMENT REGULATIONS.—The Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation under paragraph (1) to be consistent with the regulations issued by the Director of the Office of Personnel Management under section 1122(b)(1) [5 U.S.C. 9201 note] to the maximum extent practicable. The Council shall include together with such revision an explanation of any substantive modification of the Office of Personnel Management regulations, including

an explanation of how such modification will more effectively implement the rights and protections under this section.”

*[Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1862(c)(3)(B), Jan. 1, 2021, 134 Stat. 4151, 4278, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, section 1123(c)(1) of Pub. L. 116–92, set out above, is amended by substituting “section 4657” for “section 2339”.]*

#### § 2339a. Requirements for information relating to supply chain risk

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

(1) carry out a covered procurement action; and

(2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence and Security, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(f)(3) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence<sup>1</sup> that serves as the basis for the joint recommendation specified in paragraph (1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in sub-

section (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) **LIMITATION ON DISCLOSURE.**—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head shall—

(A) notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) ensure the confidentiality of any such notifications.

(e) **DEFINITIONS.**—In this section:

(1) **HEAD OF A COVERED AGENCY.**—The term “head of a covered agency” means each of the following:

- (A) The Secretary of Defense.
- (B) The Secretary of the Army.
- (C) The Secretary of the Navy.
- (D) The Secretary of the Air Force.

(2) **COVERED PROCUREMENT ACTION.**—The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) **COVERED PROCUREMENT.**—The term “covered procurement” means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of this title, or an evaluation factor, as provided in section 2305(a)(2)(A) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply,

as provided in section 2304c(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) **SUPPLY CHAIN RISK.**—The term “supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) **COVERED SYSTEM.**—The term “covered system” means a national security system, as that term is defined in section 3552(b)(6) of title 44.

(6) **COVERED ITEM OF SUPPLY.**—The term “covered item of supply” means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

(7) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

(Added Pub. L. 115–232, div. A, title VIII, §881(a)(1), Aug. 13, 2018, 132 Stat. 1910; amended Pub. L. 116–92, div. A, title XVII, §1731(a)(43), Dec. 20, 2019, 133 Stat. 1814; Pub. L. 116–283, div. A, title X, §1081(a)(36), Jan. 1, 2021, 134 Stat. 3872.)

#### TRANSFER OF SECTION

*Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1813(g), Jan. 1, 2021, 134 Stat. 4151, 4181, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 223 of this title, inserted after section 3249, and redesignated as section 3252 of this title. See Effective Date of 2021 Amendment note below.*

#### AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116–283 inserted “and Security” after “for Intelligence”.

2019—Subsec. (e)(5). Pub. L. 116–92 substituted “section 3552(b)(6)” for “section 3542(b)”.

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1813(g) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed

implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

**§ 2339b. Notification of Navy procurement production disruptions**

(a) REQUIREMENT FOR CONTRACTOR TO PROVIDE NOTICE OF DELAYS.—The Secretary of the Navy shall require prime contractors of any Navy procurement program funded under either the Shipbuilding and Conversion, Navy account or the Other Procurement, Navy account to report within 15 calendar days any stop work order or other manufacturing disruption of 15 calendar days or more, by the prime contractor or any subcontractor, to the respective program manager and Navy technical authority.

(b) QUARTERLY REPORTS.—The Secretary of the Navy shall submit to the congressional defense committees not later than 15 calendar days after the end of each quarter of a fiscal year a report listing all notifications made pursuant to subsection (a) during the preceding quarter.

(Added Pub. L. 116-92, div. A, title VIII, §820(a), Dec. 20, 2019, 133 Stat. 1489.)

TRANSFER OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1878(a), Jan. 1, 2021, 134 Stat. 4151, 4292, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 873 of this title, inserted before section 8752, and redesignated as section 8751 of this title. See Effective Date of 2021 Amendment note below.*

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

**§ 2339c. Disclosures for offerors for certain shipbuilding major defense acquisition program contracts**

(a) IN GENERAL.—Any covered offeror seeking to be awarded a shipbuilding construction contract as part of a major defense acquisition program with funds from the Shipbuilding and Conversion, Navy account shall disclose along with the offer and any subsequent revisions of the offer (including the final proposal revision offer) if any part of the planned contract performance will or is expected to include foreign government subsidized performance, foreign financing, foreign financial guarantees, or foreign tax concessions.

(b) REQUIREMENTS.—A disclosure required under subsection (a) shall be made in a form prescribed by the Secretary of the Navy and shall include a specific description of the extent to which the planned contract performance will include, with or without contingencies, any foreign government subsidized performance, foreign financing, foreign financial guarantees, or foreign tax concessions.

(c) CONGRESSIONAL NOTIFICATION.—Not later than 5 days after awarding a contract described

under subsection (a), the Secretary of the Navy shall notify the congressional defense committees and summarize the disclosure provided under such subsection.

(d) DEFINITIONS.—In this section:

(1) COVERED OFFEROR.—The term “covered offeror” means any offeror that requires or may reasonably be expected to require, during the period of performance on a shipbuilding construction contract described in subsection (a), a method to mitigate or negate foreign ownership under section 2004.34(f)(6) of title 32, Code of Federal Regulations.

(2) FOREIGN GOVERNMENT SUBSIDIZED PERFORMANCE.—The term “foreign government subsidized performance” means any financial support, materiel, services, or guarantees of support, services, supply, performance, or intellectual property concessions, that may be provided to or for the covered offeror or the customer of the offeror by a foreign government or entity effectively owned or controlled by a foreign government, which may have the effect of supplementing, supplying, servicing, or reducing the cost or price of an end item, or supporting, financing in whole or in part, or guaranteeing contract performance by the offeror.

(3) MAJOR DEFENSE ACQUISITION PROGRAM.—The term “major defense acquisition program” has the meaning given the term in section 2430 of this title.

(Added Pub. L. 116-283, div. A, title VIII, §803(a), Jan. 1, 2021, 134 Stat. 3734.)

REPEAL OF SECTION

*Pub. L. 116-283, div. A, title XVIII, §§1801(d), 1881(a), Jan. 1, 2021, 134 Stat. 4151, 4293, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is repealed.*

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

**CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES**

Subchapter	Sec.
I. Acquisition and Cross-Servicing Agreements .....	2341
II. Other Cooperative Agreements .....	2350A

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, §1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted “Sec.” above “2341”.

1989—Pub. L. 101-189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted “COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100-26, §7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted “ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES” for “NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS” in chapter heading.