

Subsec. (a)(2). Pub. L. 110-181, §804(a)(3), as amended by Pub. L. 111-383, §1075(f)(2)(A), substituted “A specialty” for “a specialty”.

Subsec. (c). Pub. L. 110-181, §804(f)(1), substituted “Acquisitions” for “Procurements” in heading and pars. (1) and (2).

Subsec. (d). Pub. L. 110-181, §804(f)(2), substituted “acquisition” for “procurement” in introductory provisions and par. (1).

Subsec. (f). Pub. L. 110-181, §804(f)(3), substituted “acquisitions” for “procurements”.

Subsec. (g). Pub. L. 110-181, §804(c), (f)(3), substituted “acquisitions” for “procurements” and “electronic components, 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 component is critical to national security.” for “commercially available electronic components whose specialty metal content is de minimis in value compared to the overall value of the lowest level electronic component produced that contains such specialty metal.”

Subsec. (h). Pub. L. 110-181, §804(b), amended heading and text generally. Prior to amendment, text read as follows: “This section applies to procurements of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).”

Subsecs. (i) to (m). Pub. L. 110-181, §804(d), added subsecs. (i) to (k) and redesignated former subsecs. (i) and (j) as (l) and (m), respectively.

Subsec. (m)(3) to (10). Pub. L. 110-181, §804(e), as amended by Pub. L. 111-383, §1075(f)(2)(B), added pars. (3) to (10).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 to take effect immediately after the amendments made by title XVIII of Pub. L. 116-283 have taken effect, see section 1701(a)(3) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

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 OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, §1075(f)(2), Jan. 7, 2011, 124 Stat. 4376, provided that the amendment made by section 1075(f)(2) is effective as of January 28, 2008, and as if included in Public Law 110-181 as enacted.

EFFECTIVE DATE

Pub. L. 109-364, div. A, title VIII, §842(a)(4)(A), Oct. 17, 2006, 120 Stat. 2337, provided that: “Section 2533b of title 10, United States Code [now 10 U.S.C. 4863], as added by paragraph (1), shall apply with respect to contracts entered into after the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].”

REGULATIONS

Pub. L. 110-181, div. A, title VIII, §804(g), Jan. 28, 2008, 122 Stat. 211, provided that: “Not later than 120 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall prescribe regulations on the implementation of this section [amending this section and enacting provisions formerly set out as a note under section 2533b] and the amendments made by this section, including specific guidance on how thresholds established in subsections (h)(3), (i) and (j) of section 2533b of title 10, United States Code [now 10

U.S.C. 4863], as amended by this section, should be implemented.”

REQUIREMENTS RELATING TO WAIVERS OF CERTAIN DOMESTIC SOURCE LIMITATIONS RELATING TO SPECIALTY METALS

Pub. L. 110-181, div. A, title VIII, §884, Jan. 28, 2008, 122 Stat. 264, provided that:

“(a) NOTICE REQUIREMENT.—At least 30 days prior to making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code [now 10 U.S.C. 4863(b)], that would apply to more than one contract of the Department of Defense, the Secretary of Defense shall, to the maximum extent practicable and in a manner consistent with the protection of national security information and confidential business information—

“(1) publish a notice on the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site) of the Secretary’s intent to make the domestic nonavailability determination; and

“(2) solicit information relevant to such notice from interested parties, including producers of specialty metal mill products.

“(b) DETERMINATION.—(1) The Secretary shall take into consideration all information submitted pursuant to subsection (a) in making a domestic nonavailability determination pursuant to section 2533b(b) of title 10, United States Code [now 10 U.S.C. 4863(b)], that would apply to more than one contract of the Department of Defense, and may also consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information.

“(2) The Secretary shall ensure that any such determination and the rationale for such determination is made publicly available to the maximum extent consistent with the protection of national security information and confidential business information.”

§ 4864. 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) COMPONENTS FOR NAVAL VESSELS.—The following components of vessels, to the extent they are unique to marine applications:

(A) Gyrocompasses.

(B) Electronic navigation chart systems.

(C) Steering controls.

(D) Propulsion and machinery control systems.

(E) Totally enclosed lifeboats.

(F) Welded shipboard anchor and mooring chain.

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

(4) COMPONENTS FOR T-AO 205 CLASS VESSELS.—The following components of T-AO 205 class vessels:

(A) Auxiliary equipment, including pumps, for all shipboard services.

(B) Propulsion system components, including engines, reduction gears, and propellers.

¹ So in original. Probably should be “subsection (l)”. See References in Text note below.

(C) Shipboard cranes.

(D) Spreaders for shipboard cranes.

(5) STAR TRACKER.—A star tracker used in a satellite weighing more than 400 pounds whose principal purpose is to support the national security, defense, or intelligence needs of the United States Government.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—(1) Except as provided in paragraph (2), a manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) A manufacturer of welded shipboard anchor and mooring chain for naval vessels meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(c) APPLICABILITY TO CERTAIN ITEMS.—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.

(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 4851 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 4801(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 4801(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 4852(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.—This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(2), 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 and Sustainment.

(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) 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 4801(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 4801(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 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 compo-

nent 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.

(l)² IMPLEMENTATION OF AUXILIARY SHIP COMPONENT LIMITATION.—Subsection (a)(3) 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,

² So in original. There is no subsec. (k).

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; renumbered §4864 and amended Pub. L. 116-283, div. A, title VIII, §845(a), title XVI, §1603(a), title XVIII, §1870(c)(2)-(4), Jan. 1, 2021, 134 Stat. 3766, 4043, 4285; Pub. L. 117-81, div. A, title VIII, §816, title X, §1081(a)(30), title XVII, §1701(b)(23), Dec. 27, 2021, 135 Stat. 1825, 1921, 2135.)

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.

Editorial Notes

REFERENCES IN TEXT

Subsection (k), referred to in subsec. (a)(3), probably should be a reference to subsec. (l). Prior to amendment by Pub. L. 116-283, this section contained two subssecs. (k). Section 845(a)(8) of Pub. L. 116-283 redesignated the subsec. (k) relating to limitation on certain procurements application process as (j), but the reference in subsec. (a)(3) was probably to the subsec. (k) relating to implementation of auxiliary ship component limitation, which was redesignated as subsec. (l) by section 1870(c)(4) of Pub. L. 116-283.

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

AMENDMENTS

2021—Pub. L. 116-283, §1870(c)(2), renumbered section 2534 of this title as this section.

Subsec. (a)(2). Pub. L. 116-283, §845(a)(1)(A),(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “Chemical weapons antidote contained in automatic injectors (and components for such injectors).”

Subsec. (a)(2)(F). Pub. L. 117-81, §816(1), added subpar. (F).

Subsec. (a)(3). Pub. L. 117-81, §1081(a)(30)(A), substituted “subsection (k)” for “subsection (j)”.

Pub. L. 116-283, §845(a)(1)(A), (C), redesignated par. (6) as (3), substituted “subsection (j)” for “subsection (k)”, and struck out former par. (3) which related to components for naval vessels.

Subsec. (a)(4). Pub. L. 116-283, §845(a)(1)(A), (D), added par. (4) and struck out former par. (4) which related to valves and machine tools.

Subsec. (a)(5). Pub. L. 117-81, §1081(a)(30)(B), substituted “principal” for “principle”.

Pub. L. 116-283, §1603(a), added par. (5).

Pub. L. 116-283, §845(a)(1)(A), struck out par. (5). Text read as follows: “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.”

Subsec. (a)(6). Pub. L. 116-283, §845(a)(1)(A), redesignated par. (6) as (3).

Subsec. (b). Pub. L. 117-81, §816(2), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), a manufacturer” for “A manufacturer”, and added par. (2).

Pub. L. 116-283, §845(a)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to manufacturer in the national technology and industrial base.

Subsec. (c). Pub. L. 116-283, §845(a)(3), struck out par. (1) designation and heading and struck out pars. (2) to (5), which related to valves and machine tools, ball bearings and roller bearings, vessel propellers, and chemical weapons antidote, respectively.

Subsec. (d)(3). Pub. L. 116-283, §1870(c)(3)(A), substituted “section 4851” for “section 2531”.

Subsec. (d)(4), (5). Pub. L. 116-283, §1870(c)(3)(B), as added by Pub. L. 117-81, §1701(b)(23)(A), substituted “section 4801(1)” for “section 2500(1)”.

Subsec. (e)(3). Pub. L. 116-283, §1870(c)(3)(C), formerly §1870(c)(3)(B), as redesignated by Pub. L. 117-81, §1701(b)(23)(B), substituted “section 4852(d)(1)” for “section 2532(d)(1)”.

Subsec. (g). Pub. L. 116-283, §845(a)(4), struck out par. (1) designation and par. (2) which read as follows: “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.”

Subsec. (h). Pub. L. 116-283, §845(a)(5), substituted “subsection (a)(2)” for “subsection (a)(3)(B)” in introductory provisions.

Subsec. (i)(3). Pub. L. 116-283, §845(a)(6), substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

Subsec. (j). Pub. L. 116-283, §845(a)(7), (8), redesignated subsec. (k) related to limitation on certain procurements application process as (j) and struck out former subsec. (j) which related to inapplicability to certain contracts to purchase ball bearings or roller bearings.

Subsec. (j)(2)(B). Pub. L. 116-283, §1870(c)(3)(D), formerly §1870(c)(3)(C), as redesignated and amended by Pub. L. 117-81, §1701(b)(23)(B), (C), substituted “section 4801(1)” for “section 2500(1)” in two places.

Subsec. (k). Pub. L. 116-283, §1870(c)(4), redesignated subsec. (k) relating to implementation of auxiliary ship component limitation as (l).

Pub. L. 116-283, §845(a)(9), substituted “Subsection (a)(3)” for “Subsection (a)(6)” in subsec. (k) relating to implementation of auxiliary ship component limitation.

Pub. L. 116-283, §845(a)(8), redesignated subsec. (k) related to limitation on certain procurements application process as (j).

Subsec. (l). Pub. L. 116-283, §1870(c)(4), redesignated subsec. (k) relating to implementation of auxiliary ship component limitation as (l).

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 section 2534 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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–81 applicable as if included in the enactment of title XVIII of Pub. L. 116–283 as enacted, see section 1701(a)(2) of Pub. L. 117–81, set out in a note preceding section 3001 of this title and note below.

Amendment by section 1870(c)(2)–(4) 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.

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 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 [now 10 U.S.C. 4864(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 [now 10 U.S.C. 4864(d)], on the basis of the applicability of paragraph (2) or (3) of that subsection.”

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 8752 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) [see, now, 10 U.S.C. 4864(e)], 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].”

REVIEW OF SELECT COMPONENTS

Pub. L. 116-283, div. A, title VIII, §845(b), Jan. 1, 2021, 134 Stat. 3767, provided that:

“The Secretary of the Defense shall expedite the review period under paragraph (3)(B) of section 2534(j) of title 10, United States Code [now 10 U.S.C. 4864(j)], as redesignated by subsection (a), to not more than 60 days for applications submitted pursuant to such section 2534(j) [now 4864(j)] for the following components for auxiliary ships:

“(1) Auxiliary equipment, including pumps, for all shipboard services.

“(2) Propulsion system components, including engines, reduction gears, and propellers.

“(3) Shipboard cranes.

“(4) Spreaders for shipboard cranes.”

CERTAIN EXEMPTION

Pub. L. 116-283, div. A, title XVI, §1603(b), Jan. 1, 2021, 134 Stat. 4043, provided that: “Paragraph (5) of section 2534(a) of title 10, United States Code [now 10 U.S.C. 4864(a)(5)], as added by subsection (a) of this section, shall not apply with respect to programs that have received Milestone A approval (as defined in section 2431a of such title [now 10 U.S.C. 4211]) before October 1, 2021.”

CLARIFICATION OF DELEGATION AUTHORITY

Pub. L. 116-283, div. A, title XVI, §1603(c), Jan. 1, 2021, 134 Stat. 4043, provided that: “Subject to subsection (i) of section 2534 of title 10, United States Code [now 10 U.S.C. 4864(i)], the Secretary of Defense may delegate to a service acquisition executive the authority to make a waiver under subsection (d) of such section with respect to the limitation under subsection (a)(5) of such section, as added by subsection (a) of this section.”

PROCUREMENT OF PHOTOVOLTAIC DEVICES

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.”

SUBCHAPTER III—LIMITATIONS ON PROCUREMENT FROM CERTAIN FOREIGN SOURCES

Sec. 4871.	Contracts: consideration of national security objectives.
4872.	Acquisition of sensitive materials from non-allied foreign nations: prohibition.
4873.	Additional requirements pertaining to printed circuit boards. ¹
4874.	Award of certain contracts to entities controlled by a foreign government: prohibition.
4875.	Prohibition on acquisition of personal protective equipment and certain other items from non-allied foreign nations. ¹

Editorial Notes

CODIFICATION

Item 4873 was added to this analysis by section 1701(e)(2)(B) of Pub. L. 117-81 in conjunction with the transfer of section 2533d of this title to section 4873. However, the transfer was not executed in light of the repeal of section 2533d, which took effect just prior to the transfer. See Codification note under section 4873 of this title.

Item 4875 was added to this analysis by section 802(b)(2)(A) of Pub. L. 117-81 in conjunction with the transfer of section 2533e of this title to section 4875. However, the transfer was not executed in light of the repeal of section 2533e, which took effect just prior to the transfer. See Codification note under section 4875 of this title.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title XVII, §1701(t)(1), Dec. 27, 2021, 135 Stat. 2150, amended Pub. L. 116-283, div. A, title XVIII, §1870(d)(1), Jan. 1, 2021, 135 Stat. 4286, which added this analysis, by substituting “Contracts: consideration of national security objectives” for “Acquisition of sensitive materials from non-allied foreign nations: prohibition” in item 4871 and “Acquisition of sensitive materials from non-allied foreign nations: prohibition” for “Award of certain contracts to entities controlled by a foreign government: prohibition” in item 4872 and by adding item 4874.

Pub. L. 117-81, div. A, title VIII, §802(b)(2)(A), title XVII, §1701(e)(2)(B), Dec. 27, 2021, 135 Stat. 1813, 2138, added items 4873 and 4875. See Codification notes above. Amendment by section 1701(e)(2)(B), which directed adding item 4873 to the analysis for this chapter, was executed by adding item 4873 to analysis for this subchapter to reflect the probable intent of Congress.

Statutory Notes and Related Subsidiaries

ENHANCED AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN AFRICA IN SUPPORT OF CERTAIN ACTIVITIES

Pub. L. 114-328, div. A, title VIII, §899A(a)–(e), Dec. 23, 2016, 130 Stat. 2336, 2337, provided that:

“(a) IN GENERAL.—Except as provided in subsection (c), in the case of a product or service to be acquired in support of covered activities in a covered African country for which the Secretary of Defense makes a determination described in subsection (b), the Secretary may conduct a procurement in which—

“(1) competition is limited to products or services from the host nation;

¹ See Codification note below.