

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 4863(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, § 871(a), Aug. 13, 2018, 132 Stat. 1904, § 2533c; amended Pub. L. 116–92, div. A, title VIII, § 849, Dec. 20, 2019, 133 Stat. 1508; renumbered § 4872 and amended Pub. L. 116–283, div. A, title VIII, § 844(a), title XVIII, § 1870(d)(2), (3), Jan. 1, 2021, 134 Stat. 3766, 4286; Pub. L. 117–81, div. A, title XVII, § 1701(t)(2)(B), (C), (3), Dec. 27, 2021, 135 Stat. 2150.)

AMENDMENT OF SUBSECTIONS (a)(1) AND (c)(3)(A)(i)

Pub. L. 116–283, div. A, title VIII, § 844, Jan. 1, 2021, 134 Stat. 3766, provided that, effective 5 years after Jan. 1, 2021, section 2533c of this title, which is now this section, is amended as follows:

(1) in subsection (a)(1), by striking “material melted” and inserting “material mined, refined, separated, melted.”; and

(2) in subsection (c)(3)(A)(i), by striking “tungsten” and inserting “covered material”.

See Codification and 2021 Amendment notes below.

Editorial Notes

CODIFICATION

Pub. L. 116–283, § 1870(d)(2), which had initially directed the transfer of section 2536 of this title to this section, was amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), and, after that amendment, such transfer was no longer directed. Instead, Pub. L. 116–283, as amended by Pub. L. 117–81, transferred section 2533c of this title to this section and section 2536 of this title to section 4874.

Amendments by section 844(a) of Pub. L. 116–283, which were directed to section 2533c of this title effective 5 years after Jan. 1, 2021, are to be executed to this section, to reflect the probable intent of Congress and the renumbering of section 2533c as this section by Pub. L. 116–283, as amended by Pub. L. 117–81, effective Jan. 1, 2022.

AMENDMENTS

2021—Pub. L. 116–283, § 1870(d)(3)(B), as amended by Pub. L. 117–81, § 1701(t)(3), amended section catchline generally. Prior to amendment, section catchline read as follows: “Prohibition on acquisition of sensitive materials from non-allied foreign nations”.

Pub. L. 116–283, § 1870(d)(2), as amended by Pub. L. 117–81, § 1701(t)(2)(B), (C), renumbered section 2533c of this title as this section.

Subsec. (a)(1). Pub. L. 116–283, § 844(a)(1), substituted “material mined, refined, separated, melted,” for “material melted”. See Codification note above.

Subsec. (c)(3)(A)(i). Pub. L. 116–283, § 844(a)(2), substituted “covered material” for “tungsten”. See Codification note above.

Subsec. (d)(3). Pub. L. 116–283, § 1870(d)(3)(A), as amended by Pub. L. 117–81, § 1701(t)(3), substituted “section 4863(m)” for “section 2533b(m)”.

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).

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 for section 1870(d)(2), (3) of Pub. L. 116–283.

Pub. L. 116–283, div. A, title VIII, § 844(b), Jan. 1, 2021, 134 Stat. 3766, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date that is 5 years after the date of the enactment of this Act [Jan. 1, 2021].”

Amendment by section 1870(d)(2), (3) 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.

[§ 4873. Additional requirements pertaining to printed circuit boards]

Editorial Notes

CODIFICATION

Pub. L. 117–81, div. A, title XVII, § 1701(e)(2)(A), Dec. 27, 2021, 135 Stat. 2138, attempted to transfer section

2533d of this title to this chapter, insert it after section 4872 of this title, redesignate it as section 4873 of this title, and amend subsec. (a)(2) by striking “section 2338” and inserting “section 3573”, all of which was to take effect immediately after the amendments made by title XVIII of Pub. L. 116-283 took effect, pursuant to section 1701(a)(3) of Pub. L. 117-81, set out in an Effective Date of 2021 Amendment note preceding section 3001 of this title. However, chapter 148 of this title, which included section 2533d, was repealed by Pub. L. 116-283, div. A, title XVIII, §1881(a), Jan. 1, 2021, 134 Stat. 4293, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, pursuant to Pub. L. 116-283, div. A, title XVIII, §1801(d), Jan. 1, 2021, 134 Stat. 4151, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title. Text of section 2533d of this title is set out in a Codification note under that section.

§ 4874. 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, §2536; 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; renumbered §4874, Pub. L. 116-283, div. A, title XVIII, §1870(d)(2), Jan. 1, 2021, 134 Stat. 4286; Pub. L. 117-81, div. A, title XVII, §1701(t)(2)(B), (C), Dec. 27, 2021, 135 Stat. 2150.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1870(d)(2), as amended by Pub. L. 117-81, §1701(t)(2)(B), (C), renumbered section 2536 of this title as this section.

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.”