

U.S.C. 2151 et seq.) to the government of any country that provides to or receives from the Government of North Korea a defense article or defense service, as such terms are defined in section 2794 of this title, if the President determines that a significant type or amount of such article or service has been so provided or received.

(2) Applicability

The prohibition under paragraph (1) with respect to a government shall terminate on the date that is 5 years after the date on which the prohibition under paragraph (1) is applied to that government.

(c) Waiver

Notwithstanding any other provision of law, the Secretary of State may waive the prohibitions under this section with respect to a country if the Secretary—

(1) determines that such waiver is in the national interest of the United States; and

(2) submits a written report to the appropriate congressional committees that describes—

(A) the steps that the relevant agencies are taking to curtail the trade described in subsection (b)(1); and

(B) why such waiver is in the national interest of the United States.

(d) Exception

The prohibitions under this section shall not apply to the provision of assistance for human rights, democracy, rule of law, maternal and child health, disease prevention and response, or humanitarian purposes.

(e) Report on arms trafficking involving North Korea

(1) In general

Not later than 180 days after August 2, 2017, and annually thereafter for 5 years, the Secretary of State shall submit to the appropriate congressional committees a report that specifically describes the compliance of foreign countries and other foreign jurisdictions with the requirement to curtail the trade described in subsection (b)(1).

(2) Form

The report required under paragraph (1) shall be submitted in unclassified form but may contain a classified annex.

(Pub. L. 114-122, title II, §203, Feb. 18, 2016, 130 Stat. 106; Pub. L. 115-44, title III, §313, Aug. 2, 2017, 131 Stat. 945; Pub. L. 116-92, div. F, title LXXI, §7123, Dec. 20, 2019, 133 Stat. 2248.)

Editorial Notes

REFERENCES IN TEXT

Section 4605(j) of title 50, referred to in subsec. (a), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

The Foreign Assistance Act of 1961, referred to in subsec. (b)(1), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

2019—Subsec. (b)(2). Pub. L. 116-92 substituted “5 years” for “2 years”.

2017—Subsec. (b). Pub. L. 115-44, §313(1)(A), substituted “Transactions in defense articles or defense services” for “Transactions in lethal military equipment” in heading.

Subsec. (b)(1). Pub. L. 115-44, §313(1)(B), substituted “that provides to or receives from the Government of North Korea a defense article or defense service, as such terms are defined in section 2794 of this title, if the President determines that a significant type or amount of such article or service has been so provided or received” for “that provides lethal military equipment to the Government of North Korea”.

Subsec. (b)(2). Pub. L. 115-44, §313(1)(C), substituted “2 years” for “1 year”.

Subsec. (d). Pub. L. 115-44, §313(2), substituted “maternal and child health, disease prevention and response, or” for “or emergency”.

Subsec. (e). Pub. L. 115-44, §313(3), added subsec. (e).

§ 9224. Procurement sanctions

(a) In general

Except as provided in this section, the head of an executive agency may not procure, or enter into any contract for the procurement of, any goods or services from any person designated under section 9214(a) or (g) of this title.

(b) Federal Acquisition Regulation

(1) In general

The Federal Acquisition Regulation issued pursuant to section 1303(a)(1) of title 41 shall be revised to require that each person that is a prospective contractor submit a certification that such person does not engage in any activity described in section 9214(a) or (g) of this title.

(2) Applicability

The revision required under paragraph (1) shall apply with respect to contracts for which solicitations are issued on or after the date that is 90 days after February 18, 2016.

(c) Remedies

(1) Inclusion on list

The Administrator of General Services shall include, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation, each person that is debarred, suspended, or proposed for debarment or suspension by the head of an executive agency on the basis of a determination of a false certification under subsection (b).

(2) Contract termination; suspension

If the head of an executive agency determines that a person has submitted a false certification under subsection (b) after the date on which the Federal Acquisition Regulation is revised to implement the requirements of this section, the head of such executive agency shall—

(A) terminate any contract with such person; and

(B) debar or suspend such person from eligibility for Federal contracts for a period of not longer than 2 years.

(3) Applicable procedures

Any debarment or suspension under paragraph (2)(B) shall be subject to the procedures

that apply to debarment and suspension under subpart 9.4 of the Federal Acquisition Regulation.

(d) Clarification regarding certain products

The remedies specified in subsection (c) shall not apply with respect to the procurement of any eligible product (as defined in section 2518(4) of title 19 of any foreign country or instrumentality designated under section 2511(b) of title 19.

(e) Rule of construction

Nothing in this subsection may be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under subsection (b).

(f) Executive agency defined

In this section, the term “executive agency” has the meaning given such term in section 133 of title 41.

(Pub. L. 114–122, title II, §204, Feb. 18, 2016, 130 Stat. 107; Pub. L. 116–92, div. F, title LXXXI, §7122(b)(3), Dec. 20, 2019, 133 Stat. 2248.)

Editorial Notes

AMENDMENTS

2019—Subsecs. (a), (b)(1). Pub. L. 116–92 inserted “or (g)” after “section 9214(a)”.

Statutory Notes and Related Subsidiaries

ASSESSMENT AND AUTHORITY TO TERMINATE OR PROHIBIT CONTRACTS FOR PROCUREMENT FROM CHINESE COMPANIES PROVIDING SUPPORT TO THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA

Pub. L. 115–91, div. A, title VIII, §888, Dec. 12, 2017, 131 Stat. 1507, provided that:

“(a) ASSESSMENT REQUIRED.—

“(1) IN GENERAL.—The Secretary of Defense, in consultation with the Secretary of State, the Secretary of the Treasury, and the Director of National Intelligence, shall conduct an assessment of trade between the People’s Republic of China and the Democratic People’s Republic of Korea, including elements deemed to be important to United States national security and defense.

“(2) ELEMENTS.—The assessment required by paragraph (1) shall—

“(A) assess the composition of all trade between China and the Democratic People’s Republic of Korea, including trade in goods and services;

“(B) identify whether any Chinese commercial entities that are engaged in such trade materially support illicit activities on the part of North Korea;

“(C) evaluate the extent to which the United States Government procures goods or services from any commercial entity identified under subparagraph (B);

“(D) provide a list of commercial entities identified under subparagraph (B) that provide defense goods or services for the Department of Defense; and

“(E) evaluate the ramifications to United States national security, including any impacts to the defense industrial base, Department of Defense acquisition programs, and Department of Defense logistics or supply chains, of prohibiting procurements from commercial entities listed under subparagraph (D).

“(3) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Sec-

retary of Defense shall submit to Congress a report on the assessment required by paragraph (1). The report shall be submitted in unclassified form, but may contain a classified annex.

“(b) AUTHORITY.—The Secretary of Defense may terminate existing contracts or prohibit the award of contracts for the procurement of goods or services for the Department of Defense from a Chinese commercial entity included on the list described under subsection (a)(2)(D) based on a determination informed by the assessment required under subsection (a)(1).

“(c) NOTIFICATION.—The Secretary of Defense shall submit to the appropriate committees of Congress a notification of, and detailed justification for, any exercise of the authority in subsection (b) not less than 30 days before the date on which the authority is exercised.

“(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

“(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.”

§ 9225. Enhanced inspection authorities

(a) Report required

(1) In general

Not later than 180 days after August 2, 2017, and annually thereafter for 5 years, the President shall submit to the appropriate congressional committees a report—

(A) identifying the operators of foreign sea ports and airports that knowingly—

(i) significantly fail to implement or enforce regulations to inspect ships, aircraft, cargo, or conveyances in transit to or from North Korea, as required by applicable United Nations Security Council resolutions;

(ii) facilitate the transfer, transshipment, or conveyance of significant types or quantities of cargo, vessels, or aircraft owned or controlled by persons designated under applicable United Nations Security Council resolutions; or

(iii) facilitate any of the activities described in section 9214(a) of this title;

(B) describing the extent to which the requirements of applicable United Nations Security Council resolutions to de-register any vessel owned, controlled, or operated by or on behalf of the Government of North Korea have been implemented by other foreign countries;

(C) describing the compliance of the Islamic Republic of Iran with the sanctions mandated in applicable United Nations Security Council resolutions;

(D) identifying vessels, aircraft, and conveyances owned or controlled by the Reconnaissance General Bureau of the Workers’ Party of Korea; and

(E) describing the diplomatic and enforcement efforts by the President to secure the full implementation of the applicable United Nations Security Council resolutions, as described in subparagraphs (A) through (C).

(2) Form

The report required under paragraph (1) shall be submitted in unclassified form but may contain a classified annex.