

Pub. L. 102-190, div. A, title VIII, §824(a), Dec. 5, 1991, 105 Stat. 1436; renumbered § 2523 and amended Pub. L. 102-484, div. D, title XLII, § 4233(a), (b), Oct. 23, 1992, 106 Stat. 2687; Pub. L. 103-160, div. A, title IX, § 904(d)(1), title XI, § 1182(b)(2), title XIII, § 1315(d), Nov. 30, 1993, 107 Stat. 1728, 1772, 1787, related to manufacturing extension programs.

A prior section 2523, added Pub. L. 102-190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1427, related to defense dual-use critical technology partnerships, prior to repeal and restatement in section 2511 of this title by Pub. L. 102-484, §§ 4202(a), 4221(a).

Section 2524, added Pub. L. 102-484, div. D, title XLII, § 4234(a), Oct. 23, 1992, 106 Stat. 2687; amended Pub. L. 103-35, title II, § 201(g)(9), May 31, 1993, 107 Stat. 100; Pub. L. 103-160, div. A, title XIII, §§ 1314, 1315(e), Nov. 30, 1993, 107 Stat. 1786, 1788; Pub. L. 103-337, div. A, title X, § 1070(b)(10), title XI, §§ 1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867-2869; Pub. L. 104-106, div. A, title XV, § 1503(a)(27), Feb. 10, 1996, 110 Stat. 512, related to defense dual-use assistance extension program.

A prior section 2524 was renumbered section 2513 of this title.

### [§ 2525. Renumbered § 2521]

#### PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

#### SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

##### Sec.

- 2531. Defense memoranda of understanding and related agreements.
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- 2533a. Requirement to buy certain articles from American sources; exceptions.
- 2533b. Requirement to buy strategic materials critical to national security from American sources; exceptions.
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- 2535. Defense Industrial Reserve.
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- 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
- 2539. Industrial mobilization: plants; lists.
- 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.
- 2539b. Availability of samples, drawings, information, equipment, materials, and certain services.

#### AMENDMENTS

2011—Pub. L. 111-350, §5(b)(36), Jan. 4, 2011, 124 Stat. 3845, substituted “chapter 83 of title 41” for “the Buy American Act” in item 2533.

2008—Pub. L. 110-181, div. A, title X, §1063(c)(8), Jan. 28, 2008, 122 Stat. 323, amended directory language of Pub. L. 109-364, §842(a)(2). See 2006 Amendment note below.

2006—Pub. L. 109-364, div. A, title VIII, §842(a)(2), Oct. 17, 2006, 120 Stat. 2337, as amended by Pub. L. 110-181, div. A, title X, §1063(c)(8), Jan. 28, 2008, 122 Stat. 323, added item 2533b.

2001—Pub. L. 107-107, div. A, title VIII, §832(a)(2), Dec. 28, 2001, 115 Stat. 1190, added item 2533a.

1994—Pub. L. 103-337, div. A, title VIII, §812(b)(2), title X, §1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted “Determinations of public interest under the Buy American Act” for “Limitation on use of funds: procurement of goods which are other than American goods” in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103-160, div. A, title VIII, §§828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, 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” in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102-484, div. A, title VIII, §§836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

### § 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of un-

derstanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100-456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101-189, div. A, title VIII, § 815(a), Nov. 29, 1989, 103 Stat. 1500; Pub. L. 101-510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102-484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

#### AMENDMENTS

1992—Pub. L. 102-484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102-484, § 4271(c), substituted “defense technology and industrial base” for “defense industrial base”.

1990—Subsec. (a). Pub. L. 101-510 inserted “or to the reciprocal procurement of defense items,” after “defense equipment,” in introductory provisions.

1989—Pub. L. 101-189 inserted “and related agreements” after “understanding” in section catchline and amended text generally. Prior to amendment, text read as follows: “In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

“(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

“(2) regularly solicit and consider information or recommendations from the Secretary of Commerce with respect to the effect on the United States industrial base of such memorandum of understanding.”

#### DEFENSE TRADE RECIPROCITY

Pub. L. 108-375, div. A, title VIII, § 831, Oct. 28, 2004, 118 Stat. 2017, provided that:

“(a) POLICY.—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

“(b) REQUIREMENT.—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

“(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

“(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

“(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘foreign defense trade partner’ means a foreign country with respect to which there is—

“(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

“(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

“(2) The term ‘offset agreement’ has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

“(3) The terms ‘defense article’ and ‘defense service’ have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).”

#### § 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Sec-

retary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding \$50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term “United States firm” means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term “foreign firm” means a business entity other than a United States firm.

(Added Pub. L. 100-456, div. A, title VIII, §825(b), Sept. 29, 1988, 102 Stat. 2020, §2505; renumbered §2532, Pub. L. 102-484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659.)

#### AMENDMENTS

1992—Pub. L. 102-484 renumbered section 2505 of this title as this section.

#### REVIEW OF OFFSET ARRANGEMENTS BY SECRETARY OF DEFENSE

Pub. L. 108-87, title VIII, §8138, Sept. 30, 2003, 117 Stat. 1106, directed the Secretary of Defense to review contractual offset arrangements to which the policy established under this section applied, memoranda of understanding and related agreements to which the limitation in section 2531(c) of this title applied that had been entered into with a country with respect to which such contractual offset arrangements had been entered into, and waivers granted with respect to a foreign country under section 2534(d)(3) of this title; determine the effects of the use of such arrangements, memoranda of understanding, agreements, and waivers on the national technology and industrial base; and submit a report on the results of the review to Congress not later than Mar. 1, 2005.

#### CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Section 825(a) of Pub. L. 100-456 provided that: “Congress makes the following findings:

“(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

“(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

“(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

“(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as ‘offsets’, are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

“(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

“(3) Many contracts which provide for or are subject to offset arrangements require, in connection

with such arrangements, the transfer of United States technology to foreign firms.

“(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

“(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

“(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.”

#### NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Section 825(c) of Pub. L. 100-456, as amended by Pub. L. 101-189, div. A, title VIII, §816, Nov. 29, 1989, 103 Stat. 1501, provided that:

“(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

“(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.”

[For delegation of functions of President under section 825(c) of Pub. L. 100-456 to Secretary of Defense and United States Trade Representative, see section 5-201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

#### REPORT TO CONGRESS ON OFFSET ARRANGEMENTS REQUIRED BY FOREIGN COUNTRIES AND FIRMS; DISCUSSION OF POLICY OPTIONS

Pub. L. 100-456, div. A, title VIII, §825(d), Sept. 29, 1988, 102 Stat. 2021, provided that, not later than Nov. 15, 1988, the President was to submit to Congress a comprehensive report on contractual offset arrangements required of United States firms for the supply of weapon systems or defense-related items to foreign countries or foreign firms, and, not later than Mar. 15, 1990, the President was to transmit to Congress a report containing a discussion of appropriate actions to be taken by the United States with respect to purchases from United States firms by a foreign country (or a firm of that country) when that country or firm required an offset arrangement in connection with the purchase of defense equipment or supplies in favor of such country.

#### § 2533. Determinations of public interest under chapter 83 of title 41

(a) In determining under section 8302 of title 41 whether application of such Act is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term “goods which are other than American goods” means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100-370, §3(a)(1), July 19, 1988, 102 Stat. 855, §2501; renumbered §2506, Pub. L. 100-456, div. A, title VIII, §821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered §2533, Pub. L. 102-484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103-337, div. A, title VIII, §812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104-106, div. D, title XLIII, §4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105-85, div. A, title X, §1073(a)(54), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 111-350, §5(b)(37), Jan. 4, 2011, 124 Stat. 3845.)

#### HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93-365, title VII, §707, Aug. 5, 1974, 88 Stat. 406.

#### AMENDMENTS

2011—Pub. L. 111-350, §5(b)(37)(A), substituted “chapter 83 of title 41” for “the Buy American Act” in section catchline.

Subsec. (a). Pub. L. 111-350, §5(b)(37)(B), substituted “section 8302 of title 41” for “section 2 of the Buy American Act (41 U.S.C. 10a)” in introductory provisions.

1997—Subsec. (a). Pub. L. 105-85 substituted “(41 U.S.C. 10a)” for “(41 U.S.C. 10a)”.

1996—Subsec. (a). Pub. L. 104-106 substituted “the Buy American Act (41 U.S.C. 10a)” whether application of such Act” for “title III of the Act of March 3, 1933 (41 U.S.C. 10a), popularly known as the ‘Buy American Act’, whether application of title III of such Act”.

1994—Pub. L. 103-337, §812(b)(1), substituted “Determinations of public interest under the Buy American Act” for “Limitation on use of funds: procurement of goods which are other than American goods” as section catchline.

Subsec. (a). Pub. L. 103-337, §812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

“(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

“(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

“(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

“(4) The United States balance of payments.

“(5) The cost of shipping goods which are other than American goods.

“(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.”

Subsecs. (b), (c). Pub. L. 103-337, §812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the ‘Buy American Act’.”

1992—Pub. L. 102-484 renumbered section 2506 of this title as this section.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

#### § 2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof);

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or con-

tained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations or procurements of any item listed in subsection (b)(1)(A) or (b)(2) in support of contingency operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by, or for, an establishment located outside the United States for the personnel attached to such establishment.

(4) Procurements of any item listed in subsection (b)(1)(A) or (b)(2) for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(e) EXCEPTION FOR CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

(1) Foods manufactured or processed in the United States.

(2) Waste and byproducts of cotton and wool fiber for use in the production of propellants and explosives.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 1906 of title 41.

(j) GEOGRAPHIC COVERAGE.—In this section, the term “United States” includes the possessions of the United States.

(k) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subparagraph (B), (C), (D), or (E) of subsection (b)(1), if the Secretary of Defense or of the military department concerned applies an exception set forth in subsection (c) or (e) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract, post a notification that the exception has been applied on the Internet site maintained by the General Services Administration known as FedBizOps.gov<sup>1</sup> (or any successor site).

(Added Pub. L. 107–107, div. A, title VIII, §832(a)(1), Dec. 28, 2001, 115 Stat. 1189; amended Pub. L. 108–136, div. A, title VIII, §§826, 827, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 109–163, div. A, title VIII, §§831, 833, Jan. 6, 2006, 119 Stat. 3388; Pub. L. 109–364, div. A, title VIII, §842(a)(3), Oct. 17, 2006, 120 Stat. 2337; Pub. L. 111–350, §5(b)(38), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111–383, div. A, title VIII, §847, title X, §1075(b)(38), Jan. 7, 2011, 124 Stat. 4286, 4371.)

#### REFERENCES IN TEXT

The Internet site maintained by the General Services Administration known as FedBizOps.gov, referred to in subsec. (k), probably means FedBizOpps.gov or fbo.gov, see 65 F.R. 50872.

#### AMENDMENTS

2011—Subsec. (c). Pub. L. 111–383, §847, substituted “subsection (b)” for “subsection (b)(1)”.

Subsec. (d)(1), (4). Pub. L. 111–383, §1075(b)(38), substituted “(b)(1)(A) or (b)(2)” for “(b)(1)(A), (b)(2), or (b)(3)”.

Subsec. (i). Pub. L. 111–350 substituted “section 1906 of title 41” for “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)”.

2006—Subsec. (b)(1)(B). Pub. L. 109–163, §833(b), inserted before semicolon “and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof)”.

Subsec. (b)(2), (3). Pub. L. 109–364, §842(a)(3)(A), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “Specialty metals, including stainless steel flatware.”

Subsec. (c). Pub. L. 109–364, §842(a)(3)(B), struck out “or specialty metals (including stainless steel flatware)” after “subsection (b)(1)”.

<sup>1</sup> See References in Text note below.

Subsec. (d)(3). Pub. L. 109-163, §831, inserted “, or for,” after “perishable foods by”.

Subsec. (e). Pub. L. 109-364, §842(a)(3)(C), struck out “Specialty Metals and” after “Exception for” in heading and “specialty metals or” after “procurement of” in introductory provisions.

Subsec. (k). Pub. L. 109-163, §833(a), added subsec. (k). 2003—Subsec. (d). Pub. L. 108-136, §826(1), struck out “Outside the United States” after “Procurements” in heading.

Subsec. (d)(1). Pub. L. 108-136, §826(2), inserted “or procurements of any item listed in subsection (b)(1)(A), (b)(2), or (b)(3) in support of contingency operations” after “combat operations”.

Subsec. (d)(4). Pub. L. 108-136, §826(3), added par. (4). Subsec. (f). Pub. L. 108-136, §827, substituted “EXCEPTIONS FOR CERTAIN OTHER COMMODITIES AND ITEMS.—Subsection (a) does not preclude the procurement of the following:

“(1) Foods” for “EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods”, and added par. (2).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title VIII, §842(a)(4)(B), Oct. 17, 2006, 120 Stat. 2337, provided that: “The amendments made by paragraph (3) [amending this section] shall take effect on the date occurring 30 days after the date of the enactment of this Act [Oct. 17, 2006].”

#### SHORT TITLE

This section is popularly known as the “Berry Amendment”.

#### FIRE RESISTANT RAYON FIBER

Pub. L. 111-383, div. A, title VIII, §821(b), Jan. 7, 2011, 124 Stat. 4268, provided that: “No solicitation issued before January 1, 2015, by the Department of Defense may include a requirement that proposals submitted pursuant to such solicitation must include the use of fire resistant rayon fiber.”

Pub. L. 110-181, div. A, title VIII, §829, Jan. 28, 2008, 122 Stat. 229, as amended by Pub. L. 111-383, div. A, title VIII, §821(a), Jan. 7, 2011, 124 Stat. 4267, provided that:

“(a) AUTHORITY TO PROCURE.—The Secretary of Defense may procure fire resistant rayon fiber for the production of uniforms that is manufactured in a foreign country referred to in subsection (d) if the Secretary determines either of the following:

“(1) That fire resistant rayon fiber for the production of uniforms is not available from sources within the national technology and industrial base.

“(2) That—

“(A) procuring fire resistant rayon fiber manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts for the supply of fire resistant rayon fiber; and

“(B) such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

“(b) SUBMISSION TO CONGRESS.—Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

“(c) APPLICABILITY TO SUBCONTRACTS.—The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

“(d) FOREIGN COUNTRIES COVERED.—The authority under subsection (a) applies with respect to a foreign country that—

“(1) is a party to a defense memorandum of understanding entered into under section 2531 of title 10, United States Code; and

“(2) 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.

“(e) NATIONAL TECHNOLOGY AND INDUSTRIAL BASE DEFINED.—In this section, the term ‘national technology and industrial base’ has the meaning given that term in section 2500 of title 10, United States Code.

“(f) SUNSET.—The authority under subsection (a) shall expire on January 1, 2015.”

#### TRAINING FOR DEFENSE ACQUISITION WORKFORCE ON THE REQUIREMENTS OF THE BERRY AMENDMENT

Pub. L. 109-163, div. A, title VIII, §832, Jan. 6, 2006, 119 Stat. 3388, provided that:

“(a) TRAINING DURING FISCAL YEAR 2006.—The Secretary of Defense shall ensure that each member of the defense acquisition workforce who participates personally and substantially in the acquisition of textiles on a regular basis receives training during fiscal year 2006 on the requirements of section 2533a of title 10, United States Code (commonly referred to as the ‘Berry Amendment’), and the regulations implementing that section.

“(b) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The Secretary shall ensure that any training program developed or implemented after the date of the enactment of this Act [Jan. 6, 2006] for members of the defense acquisition workforce who participate personally and substantially in the acquisition of textiles on a regular basis includes comprehensive information on the requirements described in subsection (a).”

#### APPLICATION OF EXCEPTION TO SEAFOOD PRODUCTS

Pub. L. 108-287, title VIII, §8118, Aug. 5, 2004, 118 Stat. 998, provided that: “Notwithstanding any other provision of law, section 2533a(f) of title 10, United States Code, shall hereafter not apply to any fish, shellfish, or seafood product. This section applies to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 430) [now 41 U.S.C. 1906].”

#### § 2533b. Requirement to buy strategic materials critical to national security from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:

(1) The following types of end items, or components thereof, containing a specialty metal not melted or produced in the United States: aircraft, missile and space systems, ships, tank and automotive items, weapon systems, or ammunition.

(2) A specialty metal that is not melted or produced in the United States and that is to be purchased directly by the Department of Defense or a prime contractor of the Department.

(b) AVAILABILITY EXCEPTION.—(1) Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that compliant specialty metal of satisfactory quality and sufficient quantity, and in the required form, cannot be procured as and when needed. For purposes of the preceding sentence, the term “compliant specialty metal” means specialty metal melted or produced in the United States.

(2) This subsection applies to prime contracts and subcontracts at any tier under such contracts.

(c) EXCEPTION FOR CERTAIN ACQUISITIONS.—Subsection (a) does not apply to the following:

(1) Acquisitions outside the United States in support of combat operations or in support of contingency operations.

(2) Acquisitions for which the use of procedures other than competitive procedures has been approved on the basis of section 2304(c)(2) of this title, relating to unusual and compelling urgency of need.

(d) EXCEPTION RELATING TO AGREEMENTS WITH FOREIGN GOVERNMENTS.—Subsection (a)(1) does not preclude the acquisition of a specialty metal if—

(1) the acquisition is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(e) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, and nonappropriated fund instrumentalities operated by the Department of Defense.

(f) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to acquisitions in amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(g) EXCEPTION FOR PURCHASES OF ELECTRONIC COMPONENTS.—Subsection (a) does not apply to acquisitions of 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.

(h) APPLICABILITY TO ACQUISITIONS OF COMMERCIAL ITEMS.—(1) Except as provided in paragraphs (2) and (3), this section applies to acquisitions of commercial items, notwithstanding sections 34 and 35<sup>1</sup> of the Office of Federal Procurement Policy Act (41 U.S.C. 430 and 431).

(2) This section does not apply to contracts or subcontracts for the acquisition of commercially available off-the-shelf items, as defined in section 35(c)<sup>1</sup> of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c)), other than—

(A) contracts or subcontracts for the acquisition of specialty metals, including mill products, such as bar, billet, slab, wire, plate and sheet, that have not been incorporated into end items, subsystems, assemblies, or components;

(B) contracts or subcontracts for the acquisition of forgings or castings of specialty metals, unless such forgings or castings are incorporated into commercially available off-the-shelf end items, subsystems, or assemblies;

(C) contracts or subcontracts for commercially available high performance magnets unless such high performance magnets are incorporated into commercially available off-the-shelf-end items or subsystems; and

(D) contracts or subcontracts for commercially available off-the-shelf fasteners, unless such fasteners are—

(i) incorporated into commercially available off-the-shelf end items, subsystems, assemblies, or components; or

(ii) purchased as provided in paragraph (3).

(3) This section does not apply to fasteners that are commercial items that are purchased under a contract or subcontract with a manufacturer of such fasteners, if the manufacturer has certified that it will purchase, during the relevant calendar year, an amount of domestically melted specialty metal, in the required form, for use in the production of such fasteners for sale to the Department of Defense and other customers, that is not less than 50 percent of the total amount of the specialty metal that it will purchase to carry out the production of such fasteners.

(i) EXCEPTIONS FOR PURCHASES OF SPECIALTY METALS BELOW MINIMUM THRESHOLD.—(1) Notwithstanding subsection (a), the Secretary of Defense or the Secretary of a military department may accept delivery of an item containing specialty metals that were not melted in the United States if the total amount of noncompliant specialty metals in the item does not exceed 2 percent of the total weight of specialty metals in the item.

(2) This subsection does not apply to high performance magnets.

(j) STREAMLINED COMPLIANCE FOR COMMERCIAL DERIVATIVE MILITARY ARTICLES.—(1) Subsection (a) shall not apply to an item acquired under a prime contract if the Secretary of Defense or the Secretary of a military department determines that—

(A) the item is a commercial derivative military article; and

(B) the contractor certifies that the contractor and its subcontractors have entered into a contractual agreement, or agreements, to purchase an amount of domestically melted specialty metal in the required form, for use during the period of contract performance in the production of the commercial derivative military article and the related commercial article, that is not less than the greater of—

(i) an amount equivalent to 120 percent of the amount of specialty metal that is required to carry out the production of the commercial derivative military article (including the work performed under each subcontract); or

(ii) an amount equivalent to 50 percent of the amount of specialty metal that is purchased by the contractor and its subcontractors for use during such period in the production of the commercial derivative military article and the related commercial article.

<sup>1</sup> See References in Text note below.

(2) For the purposes of this subsection, the amount of specialty metal that is required to carry out the production of the commercial derivative military article includes specialty metal contained in any item, including commercially available off-the-shelf items, incorporated into such commercial derivative military article.

(k) NATIONAL SECURITY WAIVER.—(1) Notwithstanding subsection (a), the Secretary of Defense may accept the delivery of an end item containing noncompliant materials if the Secretary determines in writing that acceptance of such end item is necessary to the national security interests of the United States.

(2) A written determination under paragraph (1)—

(A) may not be delegated below the level of the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(B) shall specify the quantity of end items to which the waiver applies and the time period over which the waiver applies; and

(C) shall be provided to the congressional defense committees prior to making such a determination (except that in the case of an urgent national security requirement, such certification may be provided to the defense committees up to 7 days after it is made).

(3)(A) In any case in which the Secretary makes a determination under paragraph (1), the Secretary shall determine whether or not the noncompliance was knowing and willful.

(B) If the Secretary determines that the noncompliance was not knowing or willful, the Secretary shall ensure that the contractor or subcontractor responsible for the noncompliance develops and implements an effective plan to ensure future compliance.

(C) If the Secretary determines that the noncompliance was knowing or willful, the Secretary shall—

(i) require the development and implementation of a plan to ensure future compliance; and

(ii) consider suspending or debarring the contractor or subcontractor until such time as the contractor or subcontractor has effectively addressed the issues that lead to such noncompliance.

(l) SPECIALTY METAL DEFINED.—In this section, the term “specialty metal” means any of the following:

(1) Steel—

(A) with a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent.

(3) Titanium and titanium alloys.

(4) Zirconium and zirconium base alloys.

(m) ADDITIONAL DEFINITIONS.—In this section:

(1) The term “United States” includes possessions of the United States.

(2) The term “component” has the meaning provided in section 4<sup>1</sup> of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(3) The term “acquisition” has the meaning provided in section 4<sup>1</sup> of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) The term “required form” shall not apply to end items or to their components at any tier. The term “required form” means in the form of mill product, such as bar, billet, wire, slab, plate or sheet, and in the grade appropriate for the production of—

(A) a finished end item delivered to the Department of Defense; or

(B) a finished component assembled into an end item delivered to the Department of Defense.

(5) The term “commercially available off-the-shelf”, has the meaning provided in section 35(c)<sup>1</sup> of the Office of Federal Procurement Policy Act (41 U.S.C. 431(c)).

(6) The term “assemblies” means items forming a portion of a system or subsystem that can be provisioned and replaced as an entity and which incorporates multiple, replaceable parts.

(7) The term “commercial derivative military article” means an item procured by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

(8) The term “subsystem” means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

(9) The term “end item” means the final production product when assembled or completed, and ready for issue, delivery, or deployment.

(10) The term “subcontract” includes a subcontract at any tier.

(Added Pub. L. 109-364, div. A, title VIII, §842(a)(1), Oct. 17, 2006, 120 Stat. 2335; amended Pub. L. 110-181, div. A, title VIII, §804(a)-(f), Jan. 28, 2008, 122 Stat. 208-211; Pub. L. 111-350, §5(b)(39), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 111-383, div. A, title X, §1075(f)(2), Jan. 7, 2011, 124 Stat. 4376.)

#### REFERENCES IN TEXT

Section 34 of the Office of Federal Procurement Policy Act, referred to in subsec. (h)(1), means section 34 of Pub. L. 93-400, which was classified to section 430 of former Title 41, Public Contracts, and was repealed and restated in section 1906 of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

Section 35 of the Office of Federal Procurement Policy Act, referred to in subsec. (h)(1), (2) and (m)(5), means section 35 of Pub. L. 93-400, which was classified to section 431 of former Title 41, Public Contracts. Subsecs. (a) and (b) of such section 35 were repealed and restated as section 1907 of Title 41, Public Contracts, and subsec. (c) of such section 35 was repealed and restated



as section 104 of Title 41, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

Section 4 of the Office of Federal Procurement Policy Act, referred to in subsec. (m)(2), (3), means section 4 of Pub. L. 93-400, which was classified to section 403 of former Title 41, Public Contracts, and was repealed and the provisions thereof restated in sections 102, 103, 105, 107 to 116, 131 to 134, and 1301 of Title 41, Public Contracts, by Pub. L. 111-350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

#### AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 111-383, § 1075(f)(2)(A), made technical amendment to directory language of Pub. L. 110-181, § 804(a)(3). See 2008 Amendment note below.

Subsec. (h). Pub. L. 111-350, § 5(b)(39)(A), which directed substitution of “section 1906 of title 41” for “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)”, could not be executed because the words “section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)” did not appear in text.

Subsec. (j). Pub. L. 111-350, § 5(b)(39)(B), which directed substitution of “section 105 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” in subsec. (j), could not be executed because the words “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” did not appear in subsec. (j) after the amendment by Pub. L. 110-181, § 804(d).

Subsec. (m)(3) to (10). Pub. L. 111-383, § 1075(f)(2)(B), made technical amendment to directory language of Pub. L. 110-181, § 804(e). See 2008 Amendment note below.

2008—Subsec. (a). Pub. L. 110-181, § 804(a)(1), substituted “Except as provided in subsections (b) through (m), the acquisition by the Department of Defense of the following items is prohibited:” for “Except as provided in subsections (b) through (j), funds appropriated or otherwise available to the Department of Defense may not be used for procurement of—” in introductory provisions.

Subsec. (a)(1). Pub. L. 110-181, § 804(a)(2), substituted “The following” for “the following” and substituted period for “; or” at end.

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).

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, § 1075(f)(2), Jan. 7, 2011, 124 Stat. 4376, provided that amendment 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, 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 set out as a note under this section] 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, as amended by this section, should be implemented.”

#### REVIEW OF REGULATORY DEFINITION RELATING TO PRODUCTION OF SPECIALTY METALS

Pub. L. 111-383, div. A, title VIII, § 823, Jan. 7, 2011, 124 Stat. 4269, provided that:

“(a) REVIEW REQUIRED.—The Secretary of Defense shall review the regulations specified in subsection (b) to ensure that the definition of the term ‘produce’ in such regulations complies with the requirements of section 2533b of title 10, United States Code. In carrying out the review, the Secretary shall seek public comment, consider congressional intent, and revise the regulations as the Secretary considers necessary and appropriate.

“(b) REGULATIONS SPECIFIED.—The regulations referred to in subsection (a) are any portion of subpart 252.2 of the defense supplement to the Federal Acquisition Regulation that includes a definition of the term ‘produce’ for purposes of implementing section 2533b of title 10, United States Code.

“(c) COMPLETION OF REVIEW.—The Secretary shall complete the review required by subsection (a) and any necessary and appropriate revisions to the defense supplement to the Federal Acquisition Regulation not later than 270 days after the date of the enactment of this Act [Jan. 7, 2011].”

#### REVISION OF DOMESTIC NONAVAILABILITY DETERMINATIONS AND RULES

Pub. L. 110-181, div. A, title VIII, § 804(h), Jan. 28, 2008, 122 Stat. 211, provided that: “No later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], any domestic nonavailability determination under section 2533b of title 10, United States Code, including a class deviation, or rules made by the Department of Defense between December 6, 2006, and the date of the enactment of this Act, shall be reviewed and amended, as necessary, to comply with the amendments made by this section [amending this section and enacting provisions set out as a note under this section]. This requirement shall not apply to a domestic nonavailability determination that applies to—

“(1) an individual contract that was entered into before the date of the enactment of this Act; or

“(2) an individual Department of Defense program, except to the extent that such domestic nonavailability determination applies to contracts entered into after the date of the enactment of this Act.”

#### 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, 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, 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.”

ONE-TIME WAIVER OF SPECIALTY METALS DOMESTIC SOURCE REQUIREMENT

Pub. L. 109–364, div. A, title VIII, §842(b), Oct. 17, 2006, 120 Stat. 2337, provided that:

“(1) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may accept specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States before the date of the enactment of this Act [Oct. 17, 2006] with respect to which the contracting officer for the contract determines that the contractor is not in compliance with section 2533b of title 10, United States Code (as added by subsection (a)(1)), if—

“(A) the contracting officer for the contract determines in writing that—

“(i) it would not be practical or economical to remove or replace the specialty metals incorporated in such items or to substitute items containing compliant materials;

“(ii) the prime contractor and subcontractor responsible for providing items containing non-compliant materials have in place an effective plan to ensure compliance with section 2533b of title 10, United States Code (as so added), with regard to items containing specialty metals if such metals were incorporated into items produced, manufactured, or assembled in the United States after the date of the enactment of this Act [Oct. 17, 2006]; and

“(iii) the non-compliance is not knowing or willful; and

“(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics or the service acquisition executive of the military department concerned approves the determination.

“(2) NOTICE.—Not later than 15 days after a contracting officer makes a determination under paragraph (1)(A) with respect to a contract, the contracting officer shall post a notice on FedBizOpps.gov that a waiver has been granted for the contract under this subsection.

“(3) DEFINITION.—In this subsection, the term ‘FedBizOpps.gov’ means the website maintained by the General Services Administration known as FedBizOpps.gov (or any successor site).

“(4) TERMINATION OF AUTHORITY.—A contracting officer may exercise the authority under this subsection only with respect to the delivery of items the final acceptance of which takes place after the date of the en-

actment of this Act [Oct. 17, 2006] and before September 30, 2010.”

**§ 2534. 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) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) COMPONENTS FOR NAVAL VESSELS.—(A) The following components:

(i) Air circuit breakers.

(ii) Welded shipboard anchor and mooring chain with a diameter of four inches or less.

(iii) Vessel propellers with a diameter of six feet or more.

(B) The following components of vessels, to the extent they are unique to marine applications: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, and totally enclosed lifeboats.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—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.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(3) MANUFACTURER OF VESSEL PROPELLERS.—In the case of a procurement of vessel propellers referred to in subsection (a)(3)(A)(iii), the manufacturer of the propellers meets the requirements of this subsection only if—

(A) the manufacturer meets the requirements set forth in paragraph (1); and

(B) all castings incorporated into such propellers are poured and finished in the United States.

(c) APPLICABILITY TO CERTAIN ITEMS.—

(1) COMPONENTS FOR NAVAL VESSELS.—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.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 2005.

(4) VESSEL PROPELLERS.—Subsection (a)(3)(A)(iii) and this paragraph shall cease to be effective on February 10, 1998.

(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 for-

eign 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 2531 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 2500(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 2500(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 2532(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.—(1) This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(2) 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.

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(3)(B), 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, Technology, and Logistics.

(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) INAPPLICABILITY TO CERTAIN CONTRACTS TO PURCHASE BALL BEARINGS OR ROLLER BEARINGS.—(1) This section does not apply with respect to a contract or subcontract to purchase items described in subsection (a)(5) (relating to ball bearings and roller bearings) for which—

(A) the amount of the purchase does not exceed \$2,500;

(B) the precision level of the ball or roller bearings to be procured under the contract or subcontract is rated lower than the rating known as Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or an equivalent of such rating;

(C) at least two manufacturers in the national technology and industrial base that are capable of producing the ball or roller bearings have not responded to a request for quotation issued by the contracting activity for that contract or subcontract; and

(D) no bearing to be procured under the contract or subcontract has a basic outside diameter (exclusive of flange diameters) in excess of 30 millimeters.

(2) Paragraph (1) does not apply to a purchase if such purchase would result in the total amount of purchases of ball bearings and roller bearings to satisfy requirements under Department of Defense contracts, using the authority provided in such paragraph, to exceed \$200,000 during the fiscal year of such purchase.

(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, Nov. 24, 2003, 117 Stat. 1548; Pub. L. 111-350, §5(b)(40), Jan. 4, 2011, 124 Stat. 3846.)

#### 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.

#### AMENDMENTS

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 this section 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).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title VIII, §835(b), Dec. 28, 2001, 115 Stat. 1192, provided that: “Subsection (j) of such section 2534 (as added by subsection (a)) shall apply with respect to a contract or subcontract to purchase ball bearings or roller bearings entered into after the date of the enactment of this Act [Dec. 28, 2001].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 811(b) of Pub. L. 105-85 provided that: “Subsection (i) of section 2534 of such title [10 U.S.C. 2534(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, on the basis of the applicability of paragraph (2) or (3) of that subsection.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 806(a)(5) of Pub. L. 104-106 provided that: “Subsection (a)(3)(B) of section 2534 of title 10, United States Code, as amended by paragraph (1), shall apply only to contracts entered into after March 31, 1996.”

#### 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 2302 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 833(b) of Pub. L. 102-484 provided that: “Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), 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].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 835(b) of Pub. L. 101-510 provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101-510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

#### PROCUREMENT OF PHOTOVOLTAIC DEVICES

Pub. L. 111-383, div. A, title VIII, §846, Jan. 7, 2011, 124 Stat. 4285, 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 the Buy American Act ([former] 41 U.S.C. 10a et seq.) [see 41

U.S.C. 8301 et seq.], subject to the exceptions to that Act 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.”

#### ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Pub. L. 108-136, div. A, title VIII, §821, Nov. 24, 2003, 117 Stat. 1546, provided that:

“(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act [Nov. 24, 2003]. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

“(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

“(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense’s need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

“(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act [Nov. 24, 2003] or entered into after such date.

“(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.”

#### § 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess

to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term “Defense Industrial Reserve” means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term “plant equipment package” means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102-484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103-35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103-337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107-107, div. A, title X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107-217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295.)

#### CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102-484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102-484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99-661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102-484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93-155, title VIII, § 809, 87 Stat. 617.

#### AMENDMENTS

2002—Subsec. (b)(1)(G). Pub. L. 107-217 substituted “chapter 5 of title 40” for “title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)”.

2001—Subsec. (a). Pub. L. 107-107, § 1048(a)(23)(A)(i), substituted “intent of Congress—” for “intent of Congress” in introductory provisions.

Subsec. (a)(1). Pub. L. 107-107, § 1048(a)(23)(A)(ii), (iii), substituted “armed forces” for “Armed Forces” and realigned margins.

Subsec. (a)(2) to (4). Pub. L. 107-107, § 1048(a)(23)(A)(ii), realigned margins.

Subsec. (b)(1). Pub. L. 107-107, § 1048(a)(23)(B)(i), substituted “in subsection (a), the Secretary of Defense shall—” for “in this section, the Secretary is authorized and directed to—” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 107-107, § 1048(a)(23)(B)(ii), substituted “Defense Industrial Reserve” for “defense industrial reserve”.

Subsec. (c). Pub. L. 107-107, § 1048(a)(23)(C), redesignated par. (2) as (1), substituted “means—” for “means” in introductory provisions, realigned margins of subpars. (A) to (C) of par. (1) and inserted “and” after semicolon in subpar. (B), redesignated par. (3) as (2), and struck out former par. (1) which read as follows: “The term ‘Secretary’ means Secretary of Defense.”

1994—Subsec. (b)(1)(G). Pub. L. 103-337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: “authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.”

1993—Subsec. (b)(2)(B). Pub. L. 103-35 substituted “subparagraph (A)” for “paragraph (1)”.

1992—Pub. L. 102-484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102-484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted “It” for “In enacting this chapter it” in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102-484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted “in this section” for “in this chapter” in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102-484, § 4235(b), transferred the text of section 452 of Title 50, War and National Defense, to the end of this section, designated it subsec. (c), inserted heading, and substituted “In this section:” for “As used in this chapter—” in introductory provisions. See Codification note above.

#### TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Section 379(b) of Pub. L. 103-337 provided that: “Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or training school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.”

**§ 2536. 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; 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.)

AMENDMENTS

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.”

EFFECTIVE DATE OF 1992 AMENDMENT

Section 836(b) of Pub. L. 102-484 provided that: “Section 2536 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].”

**§ 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) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to the Congress, by March 31 of each year, beginning in



1994, a report containing a summary and analysis of the information collected under subsection (a) for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of United States firms engaged in the development of defense critical technologies.

(c) 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. App. 2170(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.)

#### AMENDMENTS

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 sup-

plies 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 for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 2538 and 2539 of this title.

(Added Pub. L. 103-160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705, § 2540; renumbered § 2539a, Pub. L. 103-337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

#### PRIOR PROVISIONS

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

#### AMENDMENTS

1994—Pub. L. 103-337 renumbered section 2540 of this title as this section.

### § 2539b. Availability of samples, drawings, information, equipment, materials, and certain services

(a) **AUTHORITY.**—The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government;

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

(4) make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

(b) **CONFIDENTIALITY OF TEST RESULTS.**—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) **FEEES.**—Fees made available under subsections (a)(3) and (a)(4) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) **USE OF FEES.**—Fees received under subsections (a)(3) and (a)(4) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103-160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103-337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103-355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104-106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106-65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771; Pub. L. 110-181, div. A, title II, § 232, Jan. 28, 2008, 122 Stat. 46.)

#### AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110-181, § 232(1), added par. (4).

Subsec. (c). Pub. L. 110-181, § 232(2), struck out “for services” before “made available” and substituted “subsections (a)(3) and (a)(4)” for “subsection (a)(3)”.

Subsec. (d). Pub. L. 110-181, § 232(3), struck out “for services made available” after “Fees received” and substituted “subsections (a)(3) and (a)(4)” for “subsection (a)(3)”.

1999—Subsec. (a). Pub. L. 106-65 substituted “Secretaries of the military departments” for “secretaries of the military departments”.

1996—Subsec. (a). Pub. L. 104-106, § 4321(a)(8), made technical correction to Pub. L. 103-355, § 3022. See 1994 Amendment note below.

Subsec. (c). Pub. L. 104-106, § 804, inserted “and indirect” after “recoup the direct”.

1994—Pub. L. 103-337 renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 103-355, § 3022, as amended by Pub. L. 104-106, § 4321(a)(8), inserted “rent,” after “sell,” in par. (1) and “, rent,” after “sell” in par. (2).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103-355 as enacted.

### SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES

Sec.	
2540.	Establishment of loan guarantee program.
2540a.	Transferability.
2540b.	Limitations.
2540c.	Fees charged and collected.
2540d.	Definitions.

### § 2540. Establishment of loan guarantee program

(a) **ESTABLISHMENT.**—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall estab-