''(1) ESTABLISHMENT.—The board required by subsection (c) of section 2495b of title 10, United States Code, as added by subsection (a), shall be established, and its initial nine members appointed, not later than 120 days after the date of the enactment of this Act [Oct. 14, 2008].

''(2) MEETINGS.—The board shall conduct an initial meeting within one year after the date of the appointment of the initial members of the board. At the discretion of the board, the board may consider all materials previously reviewed under such section as available for reconsideration for a minimum of 180 days following the initial meeting of the board.''

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

PRIOR PROVISIONS

A prior chapter 148, comprised of section 2501 et seq., relating to defense industrial base, was repealed, except for sections 2504 to 2507, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2504 to 2507 of that chapter were renumbered sections 2531 to 2534, respectively, of this chapter by Pub. L. 102–484, §4202(a).

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, added item for subchapter VII.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(4), Oct. 17, 1998, 112 Stat. 2136, substituted ''2500'' for ''2491'' in item for subchapter I and struck out ''and Dual-Use Assistance Extension Programs'' after ''Technology'' in item for subchapter IV.

1996—Pub. L. 104–106, div. A, title XIII, §1321(a)(2), Feb. 10, 1996, 110 Stat. 477, added item for subchapter VI.

SUBCHAPTER I—DEFINITIONS

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, §371(c)(4), Nov. 18, 1997, 111 Stat. 1705, renumbered item 2491 as 2500.

§ 2500. Definitions

In this chapter:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, production, integration, services, or information technology activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d)[1] of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, manufacturing, integration, services, and information technology activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

[1] See References in Text note below.

(11) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(12) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(13) The term ''significant equity percentage'' means—

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(14) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(15) The term ''integration'' means the process of providing systems engineering and technical direction for a system for the purpose of achieving capabilities that satisfy program requirements.

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661, § 2491; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; Pub. L. 104–106, div. A, title X, § 1081(h), Feb. 10, 1996, 110 Stat. 455; renumbered § 2500 and amended Pub. L. 105–85, div. A, title III, § 371(b)(3), title X, § 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903; Pub. L. 111–383, div. A, title VIII, § 895(a), Jan. 7, 2011, 124 Stat. 4313.)

REFERENCES IN TEXT

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (7), was classified to section 6683 of Title 42, The Public Health and Welfare, and was omitted from the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2011—Par. (1). Pub. L. 111–383, § 895(a)(1), substituted ''integration, services, or information technology'' for ''or maintenance''.

Par. (4). Pub. L. 111–383, § 895(a)(2), substituted ''production, integration, services, or information technology'' for ''or production''.

Par. (9)(A). Pub. L. 111–383, § 895(a)(3), substituted ''manufacturing, integration, services, and information technology'' for ''and manufacturing''.

Par. (15). Pub. L. 111–383, § 895(a)(4), added par. (15).

1997—Pub. L. 105–85, § 371(b)(3), renumbered section 2491 of this title as this section.

Par. (8). Pub. L. 105–85, § 1073(a)(53), substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''that appears on the list of critical technologies contained, pursuant to subsection (b)(4) of section 2505 of this title, in the most recent national technology and industrial base assessment submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of this title.''

1996—Pars. (11) to (16). Pub. L. 104–106 redesignated pars. (13) to (16) as (11) to (14), respectively, and struck out former pars. (11) and (12) which read as follows:

''(11) The term 'manufacturing extension program' means a public or private, nonprofit program for the improvement of the quality, productivity, and performance of United States-based small manufacturing firms in the United States.

''(12) The term 'United States-based small manufacturing firm' means a company or other business entity that, as determined by the Secretary of Commerce—

''(A) engages in manufacturing;

''(B) has less than 500 employees; and

''(C) is an eligible firm.''

1994—Par. (5). Pub. L. 103–337, § 1113(d), inserted before period at end '', except that such terms include a federally funded research and development center sponsored by a Federal agency''.

Par. (16). Pub. L. 103–337, § 1115(e), added par. (16).

1993—Par. (2). Pub. L. 103–160, § 1182(a)(9)(A), substituted ''nonmilitary applications'' for ''nonmilitary application''.

Par. (8). Pub. L. 103–160, § 1182(a)(9)(B), substituted ''subsection (b)(4)'' for ''subsection (f)''.

Pars. (13) to (15). Pub. L. 103–160, § 1315(f), added pars. (13) to (15).

SHORT TITLE OF 1994 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 103–337 provided that: ''This title [enacting sections 2519 and 2520 of this title, amending this section, sections 1151, 1152, 2391, 2511 to 2513, and 2524 of this title, and sections 1662d and 1662d–1 of Title 29, Labor, and enacting and amending provisions set out as notes under section 2501 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Section 1301 of title XIII of div. A of Pub. L. 103–160 provided that: ''This title [enacting sections 1152 and 1153 of this title and sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending this section, sections 1142, 1151, 1598, 2410j, 2501, 2502, 2511 to 2513, 2523, and 2524 of this title, sections 1551 and 1662d–1 of Title 29, Labor, section 31326 of Title 46, and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, repealing section 2504 of this title, enacting provisions set out as notes under sections 1143, 1151, 2501, 2511, 2701, and 5013 of this title, section 1662d–1 of Title 29, and sections 1279b and 1279d of the Appendix to Title 46, amending provisions set out as notes under sections 1143, 2391, and 2501 of this title, and repealing provisions set out as a note under section 2701 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993'.''

SHORT TITLE

Section 4001 of Pub. L. 102–484 provided that: ''This division [div. D (§§ 4001–4501) of Pub. L. 102–484, see Tables for classification] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Act of 1992'.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(f) of Pub. L. 103–160 not to alter financial commitment requirements in effect on

the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

CONGRESSIONAL FINDINGS

Section 4101 of Pub. L. 102–484 provided that: ''Congress makes the following findings:

''(1) The collapse of communism in Eastern Europe and the dissolution of the Soviet Union have fundamentally changed the military threat that formed the basis for the national security policy of the United States since the end of World War II.

''(2) The change in the military threat presents a unique opportunity to restructure and reduce the military requirements of the United States.

''(3) As the United States proceeds with the post-Cold War defense build down, the Nation must recognize and address the impact of reduced defense spending on the military personnel, civilian employees, and defense industry workers who have been the foundation of the national defense policies of the United States.

''(4) The defense build down will have a significant impact on communities as procurements are reduced and military installations are closed and realigned.

''(5) Despite the changes in the military threat, the United States must maintain the capability to respond to regional conflicts that threaten the national interests of the United States, and to reconstitute forces in the event of an extended conflict.

''(6) The skills and capabilities of military personnel, civilian employees of the Department of Defense, defense industry workers, and defense industries represent an invaluable national resource that can contribute to the economic growth of the United States and to the long-term vitality of the national technology and industrial base.

''(7) Prompt and vigorous implementation of defense conversion, reinvestment, and transition assistance programs is essential to ensure that the defense build down is structured in a manner that—

''(A) enhances the long-term ability of the United States to maintain a strong and vibrant national technology and industrial base; and

''(B) promotes economic growth.''

PURPOSES OF TITLE XLII OF PUB. L. 102–484

Section 4201 of title XLII of div. D of Pub. L. 102–484 provided that: ''The purposes of this title [see Tables for classification] are to consolidate, revise, clarify, and reenact policies and requirements, and to enact additional policies and requirements, relating to the national technology and industrial base, defense reinvestment, and defense conversion programs that further national security objectives.''

TRANSITION PROVISION; ''DEFENSE CRITICAL TECHNOLOGY'' DEFINED

Section 4203(b) of Pub. L. 102–484 provided that until first national technology and industrial base assessment was submitted to Congress by Secretary of Defense pursuant to former section 2506(e) of this title, the term ''defense critical technology'' for purposes of this chapter, would have meaning given such term in section 2521 of this title, as in effect on day before Oct. 23, 1992.

SUBCHAPTER II—POLICIES AND PLANNING

AMENDMENTS

2011—Pub. L. 111–383, div. A, title VIII, §896(b)(2), Jan. 7, 2011, 124 Stat. 4316, which directed amendment of table of sections at the beginning of this chapter by adding item 2508 at the end, was executed by adding item 2508 at the end of the table of sections at the beginning of this subchapter to reflect the probable intent of Congress.

1996—Pub. L. 104–201, div. A, title VIII, §829(g), Sept. 23, 1996, 110 Stat. 2614, added item 2504 and substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in item 2506.

Pub. L. 104–106, div. A, title X, §1081(i)(1), Feb. 10, 1996, 110 Stat. 455, substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' in item 2501.

1993—Pub. L. 103–160, div. A, title XIII, §1312(a)(2), Nov. 30, 1993, 107 Stat. 1786, struck out item 2504 ''Center for the Study of Defense Economic Adjustment''.

§ 2501. National security objectives concerning national technology and industrial base

(a) NATIONAL SECURITY OBJECTIVES FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—It is the policy of Congress that the national technology and industrial base be capable of meeting the following national security objectives:

(1) Supplying, equipping, and supporting the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, logistics, and other activities in support of military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop, produce, and support supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of

advanced military weapon systems within the national technology and industrial base.

(6) Providing for the generation of services capabilities that are not core functions of the armed forces and that are critical to military operations within the national technology and industrial base.

(7) Providing for the development, production, and integration of information technology within the national technology and industrial base.

(8) Maintaining critical design skills to ensure that the armed forces are provided with systems capable of ensuring technological superiority over potential adversaries.

(b) CIVIL-MILITARY INTEGRATION POLICY.—It is the policy of Congress that the United States attain the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; Pub. L. 104–106, div. A, title X, § 1081(a), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(a), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(a), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(b), Jan. 7, 2011, 124 Stat. 4314.)

PRIOR PROVISIONS

A prior section 2501, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2014, related to centralized guidance, analysis, and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2501 was renumbered section 2533 of this title.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–383, § 895(b)(1), substituted ''Supplying, equipping, and supporting'' for ''Supplying and equipping'' in introductory provisions.

Subsec. (a)(2). Pub. L. 111–383, § 895(b)(2), substituted ''logistics, and other activities in support of'' for ''and logistics for''.

Subsec. (a)(4). Pub. L. 111–383, § 895(b)(3), substituted '', produce, and support'' for ''and produce''.

Subsec. (a)(6) to (8). Pub. L. 111–383, § 895(b)(4), added pars. (6) and (7) and redesignated former par. (6) as (8).

2009—Subsec. (a)(6). Pub. L. 111–23 added par. (6).

1996—Pub. L. 104–106, § 1081(a)(2), substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' as section catchline.

Subsec. (a). Pub. L. 104–106, § 1081(a)(1)(A)(i), substituted ''National Security'' for ''Defense Policy'' in heading.

Subsec. (a)(5). Pub. L. 104–201 added par. (5).

Pub. L. 104–106, § 1081(a)(1)(A)(ii), struck out par. (5) which read as follows: ''Furthering the missions of the Department of Defense through the support of policy objectives and programs relating to the defense reinvestment, diversification, and conversion objectives specified in subsection (b).''

Subsecs. (b), (c). Pub. L. 104–106, § 1081(a)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which stated policy objectives of Congress relating to defense reinvestment, diversification, and conversion.

1993—Subsec. (a)(1)(A). Pub. L. 103–35 substituted ''section 108'' for ''section 104''.

Subsec. (a)(5). Pub. L. 103–160, § 1313, added par. (5).

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(10), substituted ''that, by reducing the public sector demand for capital, increases the amount of capital available'' for ''and thereby free up capital''.

EXPANSION OF THE INDUSTRIAL BASE

Pub. L. 111–383, div. A, title VIII, § 891, Jan. 7, 2011, 124 Stat. 4310, provided that:

''(a) PROGRAM TO EXPAND INDUSTRIAL BASE REQUIRED.—The Secretary of Defense shall establish a program to expand the industrial base of the Department of Defense to increase the Department's access to innovation and the benefits of competition.

''(b) IDENTIFYING AND COMMUNICATING WITH FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—The program established under subsection (a) shall use tools and resources available within the Federal Government and available from the private sector to provide a capability for identifying and communicating with firms that are not traditional suppliers, including commercial firms and firms of all business sizes, that are engaged in markets of importance to the Department of Defense in which such firms can make a significant contribution.

''(c) OUTREACH TO LOCAL FIRMS NEAR DEFENSE INSTALLATIONS.—The program established under subsection (a) shall include outreach, using procurement technical assistance centers, to firms of all business sizes in the vicinity of Department of Defense installations regarding opportunities to obtain contracts and subcontracts to perform work at such installations.

''(d) INDUSTRIAL BASE REVIEW.—The program established under subsection (a) shall include a continuous effort to review the industrial base supporting the Department of Defense, including the identification of markets of importance to the Department of Defense in which firms that are not traditional suppliers can make a significant contribution.

''(e) FIRMS THAT ARE NOT TRADITIONAL SUPPLIERS.—For purposes of this section, a firm is not a traditional supplier of the Department of Defense if it does not currently have contracts and subcontracts to perform work for the Department of Defense with a total combined value in excess of $500,000.

''(f) PROCUREMENT TECHNICAL ASSISTANCE CENTER.—In this section, the term 'procurement technical assistance center' means a center operating under a cooperative agreement with the Defense Logistics Agency to provide procurement technical assistance pursuant to the authority provided in chapter 142 of title 10, United States Code.''

EXECUTIVE AGENT FOR PRINTED CIRCUIT BOARD TECHNOLOGY

Pub. L. 110–417, [div. A], title II, § 256, Oct. 14, 2008, 122 Stat. 4404, provided that:

''(a) EXECUTIVE AGENT.—Not later than 90 days after the date of the enactment of this Act [Oct. 14, 2008], the Secretary of Defense shall designate a senior official of the Department of Defense to act as the executive agent for printed circuit board technology.

''(b) ROLES, RESPONSIBILITIES, AND AUTHORITIES.—

''(1) ESTABLISHMENT.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008],

and in accordance with Directive 5101.1, the Secretary of Defense shall prescribe the roles, responsibilities, and authorities of the executive agent designated under subsection (a).

''(2) SPECIFICATION.—The roles and responsibilities of the executive agent designated under subsection (a) shall include each of the following:

''(A) Development and maintenance of a printed circuit board and interconnect technology roadmap that ensures that the Department of Defense has access to the manufacturing capabilities and technical expertise necessary to meet future military requirements regarding such technology.

''(B) Development of recommended funding strategies necessary to meet the requirements of the roadmap developed under subparagraph (A).

''(C) Assessment of the vulnerabilities, trustworthiness, and diversity of the printed circuit board supply chain, including the development of trustworthiness requirements for printed circuit boards used in defense systems, and to develop strategies to address matters that are identified as a result of such assessment.

''(D) Such other roles and responsibilities as the Secretary of Defense considers appropriate.

''(c) SUPPORT WITHIN DEPARTMENT OF DEFENSE.—In accordance with Directive 5101.1, the Secretary of Defense shall ensure that the military departments, Defense Agencies, and other components of the Department of Defense provide the executive agent designated under subsection (a) with the appropriate support and resources needed to perform the roles, responsibilities, and authorities of the executive agent.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Directive 5101.1' means Department of Defense Directive 5101.1, or any successor directive relating to the responsibilities of an executive agent of the Department of Defense.

''(2) The term 'executive agent' has the meaning given the term 'DoD Executive Agent' in Directive 5101.1.''

REQUIREMENT FOR SEPARATE REPORTS ON TECHNOLOGY AREA REVIEW AND ASSESSMENT SUMMARIES

Pub. L. 109–163, div. A, title II, §253(c), Jan. 6, 2006, 119 Stat. 3180, provided that whenever the Secretary of Defense provided for the conduct of a study referred to as a Technology Area Review and Assessment, the Secretary, not later than March 1 of the year following the year in which that study was conducted, was to submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives a report containing a summary of each such Technology Area Review and Assessment conducted during that year, prior to repeal by Pub. L. 110–181, div. A, title II, §236, Jan. 28, 2008, 122 Stat. 47.

ESSENTIAL ITEMS IDENTIFICATION AND DOMESTIC PRODUCTION CAPABILITIES IMPROVEMENT PROGRAM

Pub. L. 108–136, div. A, title VIII, subtitle B, part I, Nov. 24, 2003, 117 Stat. 1542, as amended by Pub. L. 109–364, div. A, title VIII, §841, Oct. 17, 2006, 120 Stat. 2335; Pub. L. 111–84, div. A, title VIII, §846, Oct. 28, 2009, 123 Stat. 2420, provided that:

''SEC. 811. CONSISTENCY WITH UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

''No provision of this subtitle [subtitle B (§§811–828) of title VIII of div. A of Pub. L. 108–136, enacting section 2436 of this title, amending sections 2533a and 2534 of this title, and enacting provisions set out as notes under sections 2436, 2505, 2521, and 2534 of this title] or any amendment made by this subtitle shall apply to the extent the Secretary of Defense, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of State, determines that it is inconsistent with United States obligations under an international agreement.

''SEC. 812. ASSESSMENT AND ANNUAL REPORT OF UNITED STATES DEFENSE INDUSTRIAL BASE CAPABILITIES AND ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

''(a) ASSESSMENT PROGRAM.—(1) The Secretary of Defense shall establish a program to assess—

''(A) the degree to which the United States is dependent on foreign sources of supply; and

''(B) the capabilities of the United States defense industrial base to produce military systems necessary to support the national security objectives set forth in section 2501 of title 10, United States Code.

''(2) For purposes of the assessment program, the Secretary shall use existing data, as required under subsection (b), and submit an annual report, as required under subsection (c).

''(b) USE OF EXISTING DATA.—(1) At a minimum, with respect to each prime contract with a value greater than $25,000 for the procurement of defense items and components, the following information from existing sources shall be used for purposes of the assessment program:

''(A) Whether the contractor is a United States or foreign contractor.

''(B) The principal place of business of the contractor and the principal place of performance of the contract.

''(C) Whether the contract was awarded on a sole source basis or after receipt of competitive offers.

''(D) The dollar value of the contract.

''(2) The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(d)(4)(A)) [now 41 U.S.C. 1122(a)(4)(A)], or any successor system, shall collect from contracts described in paragraph (1) the information specified in that paragraph.

''(3) Information obtained in the implementation of this section is subject to the same limitations on disclosure, and penalties for violation of such limitations, as is provided under section 2507 of title 10, United States Code. Such information also shall be exempt from release under section 552 of title 5, United States Code.

''(4) For purposes of meeting the requirements set forth in this section, the Secretary of Defense may not require the provision of information beyond the information that is currently provided to the Department of Defense through existing data collection systems by non-Federal entities with respect to contracts and subcontracts with the Department of Defense or any military department.

''(c) ANNUAL REPORT.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the assessment program covering the preceding fiscal year. The first report under this subsection shall cover fiscal year 2004 and shall be submitted to the Committees no later than February 1, 2005.

''(2)(A) The report shall include the following with respect to contracts described in subsection (b):

''(i) The total number and value of such contracts awarded by the Department of Defense.

''(ii) The total number and value of such contracts awarded on a sole source basis.

''(iii) The total number and value of contracts described in clause (ii) awarded to foreign contractors, summarized by country.

''(iv) The total number and value of contracts awarded to foreign contractors through competitive procedures, summarized by country.

''(v) The dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States.

''(vi) An itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act ([former] 41 U.S.C. 10a et seq.) [see 41 U.S.C. 8301 et seq.].

''(vii) A summary of—

''(I) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(II) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(B) The report also shall include—

''(i) the status of the matters described in subparagraphs (A) and (B) of subsection (a)(1);

''(ii) the status of implementation of successor procurement data management systems; and

''(iii) such other matters as the Secretary considers appropriate.

''(d) PUBLIC AVAILABILITY.—The Secretary of Defense shall make the report submitted under subsection (c) publicly available to the maximum extent practicable.

''(e) APPLICABILITY.—This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''[SEC. 813. Repealed. Pub. L. 111–84, div. A, title VIII, § 846, Oct. 28, 2009, 123 Stat. 2420.]

''SEC. 814. PRODUCTION CAPABILITIES IMPROVEMENT FOR CERTAIN ESSENTIAL ITEMS USING DEFENSE INDUSTRIAL BASE CAPABILITIES FUND.

''(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Industrial Base Capabilities Fund (hereafter in this section referred to as the 'Fund').

''(b) MONEYS IN FUND.—There shall be credited to the Fund amounts appropriated to it.

''(c) USE OF FUND.—The Secretary of Defense is authorized to use all amounts in the Fund, subject to appropriation, for the purposes of enhancing or reconstituting United States industrial capability to produce items on the military system essential item breakout list (as described in section 812(b)) or items subject to section 2534 of title 10, United States Code, in the quantity and of the quality necessary to achieve national security objectives.

''(d) LIMITATION ON USE OF FUND.—Before the obligation of any amounts in the Fund, the Secretary of Defense shall submit to Congress a report describing the Secretary's plans for implementing the Fund established in subsection (a), including the priorities for the obligation of amounts in the Fund, the criteria for determining the recipients of such amounts, and the mechanisms through which such amounts may be provided to the recipients.

''(e) AVAILABILITY OF FUNDS.—Amounts in the Fund shall remain available until expended.

''(f) FUND MANAGER.—The Secretary of Defense shall designate a Fund manager. The duties of the Fund manager shall include—

''(1) ensuring the visibility and accountability of transactions engaged in through the Fund; and

''(2) reporting to Congress each year regarding activities of the Fund during the previous fiscal year.''

AIR FORCE SCIENCE AND TECHNOLOGY PLANNING

Pub. L. 107–107, div. A, title II, subtitle D, Dec. 28, 2001, 115 Stat. 1041, provided that:

''SEC. 251. SHORT TITLE.

''This subtitle may be cited as the 'Air Force Science and Technology for the 21st Century Act'.

''SEC. 252. SCIENCE AND TECHNOLOGY INVESTMENT AND DEVELOPMENT PLANNING.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force should carry out each of the following:

''(1) Continue and improve efforts to ensure that—

''(A) the Air Force science and technology community is represented, and the recommendations of that community are considered, at all levels of program planning and budgetary decisionmaking within the Air Force;

''(B) advocacy for science and technology development is institutionalized across all levels of Air Force management in a manner that is not dependent on individuals; and

''(C) the value of Air Force science and technology development is made increasingly apparent to the warfighters, by linking the needs of those warfighters with decisions on science and technology development.

''(2) Complete and adopt a policy directive that provides for changes in how the Air Force makes budgetary and nonbudgetary decisions with respect to its science and technology development programs and how it carries out those programs.

''(3) At least once every five years, conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs that is consistent with the review specified in section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]).

''(4) Ensure that development and science and technology planning and investment activities are carried out for future space warfighting systems and for future nonspace warfighting systems in an integrated manner.

''(5) Elevate the position within the Office of the Secretary of the Air Force that has primary responsibility for budget and policy decisions for science and technology programs.

''(b) REINSTATEMENT OF DEVELOPMENT PLANNING.—(1) The Secretary of the Air Force shall reinstate and implement a revised development planning process that provides for each of the following:

''(A) Coordinating the needs of Air Force warfighters with decisions on science and technology development.

''(B) Giving input into the establishment of priorities among science and technology programs.

''(C) Analyzing Air Force capability options for the allocation of Air Force resources.

''(D) Developing concepts for technology, warfighting systems, and operations with which the Air Force can achieve its critical future goals.

''(E) Evaluating concepts for systems and operations that leverage technology across Air Force organizational boundaries.

''(F) Ensuring that a 'system-of-systems' approach is used in carrying out the various Air Force capability planning exercises.

''(G) Utilizing existing analysis capabilities within the Air Force product centers in a collaborative and integrated manner.

''(2) Not later than one year after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of the Air Force shall submit to Congress a report on the implementation of the planning process required by paragraph (1). The report shall include the annual amount that the Secretary considers necessary to carry out paragraph (1).

''SEC. 253. STUDY AND REPORT ON EFFECTIVENESS OF AIR FORCE SCIENCE AND TECHNOLOGY PROGRAM CHANGES.

''(a) REQUIREMENT.—The Secretary of the Air Force, in cooperation with the National Research Council of the National Academy of Sciences, shall carry out a study to determine how the changes to the Air Force science and technology program implemented during the past two years affect the future capabilities of the Air Force.

''(b) MATTERS STUDIED.—(1) The study shall review and assess whether such changes as a whole are sufficient to ensure the following:

''(A) That the concerns about the management of the science and technology program that have been raised by Congress, the Defense Science Board, the

Air Force Science Advisory Board, and the Air Force Association have been adequately addressed.

''(B) That appropriate and sufficient technology is available to ensure the military superiority of the United States and counter future high-risk threats.

''(C) That the science and technology investments are balanced to meet the near-, mid-, and long-term needs of the Air Force.

''(D) That technologies are made available that can be used to respond flexibly and quickly to a wide range of future threats.

''(E) That the Air Force organizational structure provides for a sufficiently senior level advocate of science and technology to ensure an ongoing, effective presence of the science and technology community during the budget and planning process.

''(2) In addition, the study shall assess the specific changes to the Air Force science and technology program as follows:

''(A) Whether the biannual science and technology summits provide sufficient visibility into, and understanding and appreciation of, the value of the science and technology program to the senior level of Air Force budget and policy decisionmakers.

''(B) Whether the applied technology councils are effective in contributing the input of all levels beneath the senior leadership into the coordination, focus, and content of the science and technology program.

''(C) Whether the designation of the commander of the Air Force Materiel Command as the science and technology budget advocate is effective to ensure that an adequate Air Force science and technology budget is requested.

''(D) Whether the revised development planning process is effective to aid in the coordination of the needs of the Air Force warfighters with decisions on science and technology investments and the establishment of priorities among different science and technology programs.

''(E) Whether the implementation of section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]) is effective to identify the basis for the appropriate science and technology program funding level and investment portfolio.

''(c) REPORT.—Not later than May 1, 2003, the Secretary of the Air Force shall submit to Congress the results of the study.''

Pub. L. 106–398, §1 [[div. A], title II, §252], Oct. 30, 2000, 114 Stat. 1654, 1654A–46, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of the Air Force shall conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs. The Secretary shall complete the review not later than one year after the date of the enactment of this Act [Oct. 30, 2000].

''(b) MATTERS TO BE REVIEWED.—The review shall include the following:

''(1) An assessment of the budgetary resources that are being used for fiscal year 2001 for addressing the long-term challenges and the short-term objectives of the Air Force science and technology programs.

''(2) The budgetary resources that are necessary to address those challenges and objectives adequately.

''(3) A course of action for each projected or ongoing Air Force science and technology program that does not address either the long-term challenges or the short-term objectives.

''(4) The matters required under subsection (c)(5) and (d)(6).

''(c) LONG-TERM CHALLENGES.—(1) The Secretary of the Air Force shall establish an integrated product team to identify high-risk, high-payoff challenges that will provide a long-term focus and motivation for the Air Force science and technology programs over the next 20 to 50 years following the enactment of this Act [Oct. 30, 2000]. The integrated product team shall include representatives of the Office of Scientific Research and personnel from the Air Force Research Laboratory.

''(2) The team shall solicit views from the entire Air Force science and technology community on the matters under consideration by the team.

''(3) The team—

''(A) shall select for consideration science and technology challenges that involve—

''(i) compelling requirements of the Air Force;

''(ii) high-risk, high-payoff areas of exploration; and

''(iii) very difficult, but probably achievable, results; and

''(B) should not select a linear extension of any ongoing Air Force science and technology program for consideration as a science and technology challenge under subparagraph (A).

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall designate a technical coordinator and a management coordinator for each science and technology challenge identified pursuant to this subsection. Each technical coordinator shall have sufficient expertise in fields related to the challenge to be able to identify other experts in such fields and to affirm the credibility of the challenge. The coordinator for a science and technology challenge shall conduct workshops within the relevant scientific and technological community to obtain suggestions for possible approaches to addressing the challenge and to identify ongoing work that addresses the challenge, deficiencies in current work relating to the challenge, and promising areas of research.

''(5) In carrying out subsection (a), the Secretary of the Air Force shall review the science and technology challenges identified pursuant to this subsection and, for each such challenge, at a minimum—

''(A) consider the results of the workshops conducted pursuant to paragraph (4); and

''(B) identify any work not currently funded by the Air Force that should be performed to meet the challenge.

''(d) SHORT-TERM OBJECTIVES.—(1) The Secretary of the Air Force shall establish a task force to identify short-term technological objectives of the Air Force science and technology programs. The task force shall be chaired by the Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering and shall include representatives of the Chief of Staff of the Air Force and the specified combatant commands of the Air Force.

''(2) The task force shall solicit views from the entire Air Force requirements community, user community, and acquisition community.

''(3) The task force shall select for consideration short-term objectives that involve—

''(A) compelling requirements of the Air Force;

''(B) support in the user community; and

''(C) likely attainment of the desired benefits within a five-year period.

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall establish an integrated product team for each short-term objective identified pursuant to this subsection. Each integrated product team shall include representatives of the requirements community, the user community, and the science and technology community with relevant expertise.

''(5) The integrated product team for a short-term objective shall be responsible for—

''(A) identifying, defining, and prioritizing the enabling capabilities that are necessary for achieving the objective;

''(B) identifying deficiencies in the enabling capabilities that must be addressed if the short-term objective is to be achieved; and

''(C) working with the Air Force science and technology community to identify science and technology projects and programs that should be undertaken to eliminate each deficiency in an enabling capability.

''(6) In carrying out subsection (a), the Secretary of the Air Force shall review the short-term science and technology objectives identified pursuant to this subsection and, for each such objective, at a minimum—

''(A) consider the work of the integrated product team conducted pursuant to paragraph (5); and

''(B) identify the science and technology work of the Air Force that should be undertaken to eliminate each deficiency in enabling capabilities that is identified by the integrated product team pursuant to subparagraph (B) of that paragraph.

''(e) COMPTROLLER GENERAL REVIEW.—(1) Not later than 90 days after the Secretary of the Air Force completes the review required by subsection (a), the Comptroller General shall submit to Congress a report on the results of the review. The report shall include the Comptroller General's assessment regarding the extent to which the review was conducted in compliance with the requirements of this section.

''(2) Immediately upon completing the review required by subsection (a), the Secretary of Defense shall notify the Comptroller General of the completion of the review. For the purposes of paragraph (1), the date of the notification shall be considered the date of the completion of the review.''

REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

Pub. L. 106–65, div. A, title II, § 243, Oct. 5, 1999, 113 Stat. 551, required the Under Secretary of Defense for Acquisition, Technology, and Logistics to submit to the congressional defense committees a report on the actions necessary to promote the research base and technological development needed for ensuring that the Armed Forces had the military capabilities necessary for meeting national security requirements over the next two to three decades.

SENSE OF CONGRESS ON DEFENSE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 106–65, div. A, title II, § 212, Oct. 5, 1999, 113 Stat. 542, as amended by Pub. L. 108–136, div. A, title X, § 1031(h)(1), Nov. 24, 2003, 117 Stat. 1604; Pub. L. 109–364, div. A, title II, § 217, Oct. 17, 2006, 120 Stat. 2125, which provided the sense of Congress as to funding objectives for the Defense Science and Technology Program, was repealed by Pub. L. 111–84, div. A, title II, § 213, Oct. 28, 2009, 123 Stat. 2226.

Pub. L. 105–261, div. A, title II, § 214, Oct. 17, 1998, 112 Stat. 1948, provided that:

''(a) FUNDING REQUIREMENTS FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM BUDGET.—It is the sense of Congress that, for each of the fiscal years 2000 through 2008, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program for the fiscal year over the budget for that program for the preceding fiscal year by a percent that is at least two percent above the rate of inflation as determined by the Office of Management and Budget.

''(b) GUIDELINES FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.—

''(1) RELATIONSHIP OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO UNIVERSITY RESEARCH.—It is the sense of Congress that the following should be key objectives of the Defense Science and Technology Program:

''(A) The sustainment of research capabilities in scientific and engineering disciplines critical to the Department of Defense.

''(B) The education and training of the next generation of scientists and engineers in disciplines that are relevant to future defense systems, particularly through the conduct of basic research.

''(C) The continued support of the Defense Experimental Program to Stimulate Competitive Research and research programs at historically black colleges and universities and minority institutions.

''(2) RELATIONSHIP OF THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO COMMERCIAL RESEARCH AND TECHNOLOGY.—(A) It is the sense of Congress that, in supporting projects within the Defense Science and Technology Program, the Secretary of Defense should attempt to leverage commercial research, technology, products, and processes for the benefit of the Department of Defense.

''(B) It is the sense of Congress that funds made available for projects and programs of the Defense Science and Technology Program should be used only for the benefit of the Department of Defense, which includes—

''(i) the development of technology that has only military applications;

''(ii) the development of militarily useful, commercially viable technology; and

''(iii) the adaptation of commercial technology, products, or processes for military purposes.

''(3) SYNERGISTIC MANAGEMENT OF RESEARCH AND DEVELOPMENT.—It is the sense of Congress that the Secretary of Defense should have the flexibility to allocate a combination of funds available for the Department of Defense for basic and applied research and for advanced development to support any individual project or program within the Defense Science and Technology Program, but such flexibility should not change the allocation of funds in any fiscal year among basic and applied research and advanced development.

''(4) MANAGEMENT OF SCIENCE AND TECHNOLOGY.—It is the sense of Congress that—

''(A) management and funding for the Defense Science and Technology Program for each military department should receive a level of priority and leadership attention equal to the level received by program acquisition, and the Secretary of each military department should ensure that a senior official in the department holds the appropriate title and responsibility to ensure effective oversight and emphasis on science and technology;

''(B) to ensure an appropriate long-term focus for investments, a sufficient percentage of science and technology funds should be directed toward new technology areas, and annual reviews should be conducted for ongoing research areas to ensure that those funded initiatives are either integrated into acquisition programs or discontinued when appropriate;

''(C) the Secretary of each military department should take appropriate steps to ensure that sufficient numbers of officers and civilian employees in the department hold advanced degrees in technical fields; and

''(D) of particular concern, the Secretary of the Air Force should take appropriate measures to ensure that sufficient numbers of scientists and engineers are maintained to address the technological challenges faced in the areas of air, space, and information technology.

''(c) STUDY.—

''(1) REQUIREMENT.—The Secretary of Defense, in cooperation with the National Research Council of the National Academy of Sciences, shall conduct a study on the technology base of the Department of Defense.

''(2) MATTERS COVERED.—The study shall—

''(A) result in recommendations on the minimum requirements for maintaining a technology base that is sufficient, based on both historical developments and future projections, to project superiority in air and space weapons systems and in information technology;

''(B) address the effects on national defense and civilian aerospace industries and information technology of reducing funding below the goal described in subsection (a); and

''(C) result in recommendations on the appropriate levels of staff with baccalaureate, masters, and doctorate degrees, and the optimal ratio of civilian and military staff holding such degrees, to ensure that science and technology functions of the Department of Defense remain vital.

''(3) REPORT.—Not later than 120 days after the date on which the study required under paragraph (1) is completed, the Secretary shall submit to Congress a report on the results of the study.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Science and Technology Program' means basic and applied research and advanced development.

''(2) The term 'basic and applied research' means work funded in program elements for defense research and development under Department of Defense category 6.1 or 6.2.

''(3) The term 'advanced development' means work funded in program elements for defense research and development under Department of Defense category 6.3.''

BIENNIAL JOINT WARFIGHTING SCIENCE AND TECHNOLOGY PLAN

Pub. L. 104–201, div. A, title II, § 270, Sept. 23, 1996, 110 Stat. 2469, as amended by Pub. L. 106–65, div. A, title II, § 242, title X, § 1067(5), Oct. 5, 1999, 113 Stat. 551, 774; Pub. L. 109–163, div. A, title II, § 253(a), (b), Jan. 6, 2006, 119 Stat. 3179, 3180, which required biennial submission to Congress by the Secretary of Defense of a plan for ensuring that the science and technology program of the Department of Defense supported the development of the future joint warfighting capabilities identified as priority requirements for the Armed Forces, was repealed by Pub. L. 111–84, div. A, title II, § 241, Oct 28, 2009, 123 Stat. 2237.

COST REIMBURSEMENT RULES FOR INDIRECT COSTS ATTRIBUTABLE TO PRIVATE SECTOR WORK OF DEFENSE CONTRACTORS

Section 808 of Pub. L. 104–106 authorized Secretary of Defense to enter into agreements with defense contractors under which certain cost reimbursement rules would be applied and required submission of report to congressional defense committees not later than one year after Feb. 10, 1996, prior to repeal by Pub. L. 105–85, div. A, title X, § 1027(d), Nov. 18, 1997, 111 Stat. 1880. See section 7315 of this title.

DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS

Pub. L. 103–337, div. A, title XI, § 1118, Oct. 5, 1994, 108 Stat. 2870, provided that: ''At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in [former] section 2501(b) of such title.''

REPORTS ON DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE PROGRAMS

Pub. L. 103–160, div. A, title XIII, § 1303, Nov. 30, 1993, 107 Stat. 1784, provided that during each of the fiscal years 1994, 1995, and 1996, the Secretary of Defense was to prepare a report that assessed the effectiveness of all defense conversion, reinvestment, and transition assistance programs, as defined in section 1302 of Pub. L. 103–160, 107 Stat. 1783, during the preceding fiscal year.

NATIONAL SHIPBUILDING INITIATIVE

Sections 1351 to 1354 of Pub. L. 103–160, as amended by Pub. L. 104–201, div. A, title X, § 1073(e)(1)(F), (2)(B), (3), Sept. 23, 1996, 110 Stat. 2658, provided that:

''SEC. 1351. SHORT TITLE.

''This subtitle [subtitle D, §§ 1351–1363 of title XIII of div. A of Pub. L. 103–160, enacting sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending section 31326 of Title 46 and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, and enacting provisions set out as notes under sections 1279b and 1279d of the Appendix to Title 46] may be cited as the 'National Shipbuilding and Shipyard Conversion Act of 1993'.

''SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

''(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

''(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

''(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

''(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

''(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

''(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

''(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

''(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

''(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

''SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

''The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

''SEC. 1354. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

''(a) DARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

''(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oce-

anic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

''(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

''(B) assessments of potential markets for maritime products; and

''(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

''(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

''(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

''(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Defense Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

''(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

''(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

''(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE

Subtitle H of title I of div. A of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, § 202(a)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–337, div. A, title XI, § 1141(a), (b), Oct. 5, 1994, 108 Stat. 2879; Pub. L. 104–201, div. A, title I, § 143, Sept. 23, 1996, 110 Stat. 2449; Pub. L. 105–261, div. A, title I, § 115, Oct. 17, 1998, 112 Stat. 1939; Pub. L. 106–65, div. A, title I, § 116, Oct. 5, 1999, 113 Stat. 533, known as the ''Armament Retooling and Manufacturing Support Act of 1992'', authorized the Secretary of the Army, during fiscal years 1993 through 2001, to carry out the Armament Retooling and Manufacturing Support Initiative, prior to repeal by Pub. L. 106–398, § 1 [[div. A], title III, § 344(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

Section 4218 of Pub. L. 102–484 related to collection of information, completion of assessments, and issuance of plans required by this subchapter, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

INDUSTRIAL DIVERSIFICATION PLANNING FOR DEFENSE CONTRACTORS

Section 4239 of Pub. L. 102–484 provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations to encourage defense contractors to engage in industrial diversification planning.''

NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS

Section 4471 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title XIII, § 1372, Nov. 20, 1993, 107 Stat. 1817; Pub. L. 103–337, div. A, title XI, § 1142, Oct. 5, 1994, 108 Stat. 2881; Pub. L. 104–201, div. A, title VIII, § 824, Sept. 23, 1996, 110 Stat. 2610; Pub. L. 105–85, div. A, title X, § 1073(d)(2)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(7)(C), (f)(6)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430, provided that:

''(a) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

''(1) shall identify each contract (if any) under major defense programs of the Department of Defense that will be terminated or substantially reduced as a result of the funding levels provided in that Act; and

''(2) shall ensure that notice of the termination of, or substantial reduction in, the funding of the contract is provided—

''(A) directly to the prime contractor under the contract; and

''(B) directly to the Secretary of Labor.

''(b) NOTICE TO SUBCONTRACTORS.—Not later than 60 days after the date on which the prime contractor for a contract under a major defense program receives notice under subsection (a), the prime contractor shall—

''(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor under that prime contract for subcontracts in an amount not less than $500,000; and

''(2) require that each such subcontractor—

''(A) provide such notice to each of its subcontractors for subcontracts in an amount in excess of $100,000; and

''(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

''(c) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a), the contractor shall provide notice of such termination or substantial reduction to—

''(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

''(B) if there is no such representative at that time, each such employee; and

''(2) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998 [29 U.S.C. 2864(a)(2)(A)], and the chief elected official of the unit of general local government within which the adverse effect may occur.

''(d) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a defense contract provided under subsection (c)(1) to an employee of

a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible to participate in employment and training activities carried out under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], except in a case in which the employer has specified that the termination of, or substantial reduction in, the contract is not likely to result in plant closure or mass layoff.

''(e) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal or cancellation of the termination of, or substantial reduction in, contract funding shall not be eligible, on the basis of any related reduction in funding under the contract, to participate in employment and training activities under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], beginning on the date on which the employee receives the notice.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'major defense program' means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

''(2) The terms 'substantial reduction' and 'substantially reduced', with respect to a defense contract under a major defense program, mean a reduction of 25 percent or more in the total dollar value of the funds obligated by the contract.''

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the responsibility to ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(1) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 2501(a) of this title;

(2) programs for achieving such national security objectives; and

(3) changes in acquisition policy that strengthen the national technology and industrial base.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, §4212(a), Oct. 23, 1992, 106 Stat. 2664; amended Pub. L. 103–160, div. A, title XIII, §1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, §1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title X, §1081(b), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, §829(c)(2), formerly §829(c)(2), (3), Sept. 23, 1996, 110 Stat. 2613, renumbered Pub. L. 105–85, div. A, title X, §1073(c)(7)(B), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 105–85, div. A, title X, §1073(c)(7)(A), Nov. 18, 1997, 111 Stat. 1904.)

PRIOR PROVISIONS

A prior section 2502, added Pub. L. 100–456, div. A, title VIII, §821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2015, related to defense industrial base policies, prior to repeal by Pub. L. 102–484, §4202(a).

Another prior section 2502 was renumbered section 2534 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85, §1073(c)(7)(A), made technical correction to directory language of Pub. L. 104–201, §829(c)(2). See 1996 Amendment note below.

1996—Subsec. (c). Pub. L. 104–201, §829(c)(2), formerly §829(c)(2), (3), as renumbered and amended by Pub. L. 105–85, substituted ''the responsibility to ensure effective cooperation'' for ''the following responsibilities:'', struck out ''(1) To ensure the effective cooperation'' before ''among departments'', struck out par. (2), redesignated subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and adjusted margins of such pars. Prior to repeal, par. (2) read as follows: ''To prepare the periodic assessment and the periodic plan required by sections 2505 and 2506 of this title, respectively.''

Subsec. (c)(1)(B). Pub. L. 104–106, §1081(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''programs for achieving, during a period of reduction in defense expenditures, the defense reinvestment, diversification, and conversion objectives set forth in section 2501(b) of this title; and''.

Subsec. (c)(2), (3). Pub. L. 104–106, §1081(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''To provide overall policy guidance to ensure effective implementation by agencies of the Federal Government of defense reinvestment and conversion activities during a period of reduction in defense expenditures.''

1994—Subsec. (d). Pub. L. 103–337 substituted ''executive'' for ''Executive''.

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

§ 2503. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program for analysis of the national technology and industrial base.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Acquisition, Technology, and Logistics. In carrying out the program, the Under Secretary shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the Secretary of Defense for the preparation of the periodic assessments required by section 2505 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, § 4213(a), Oct. 23, 1992, 106 Stat. 2665; amended Pub. L. 104–201, div. A, title VIII, § 829(b), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 107–107, div. A, title X, § 1048(b)(4), Dec. 28, 2001, 115 Stat. 1225.)

PRIOR PROVISIONS

A prior section 2503, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2016; amended Pub. L. 101–189, div. A, title VIII, § 842(a), (b), Nov. 29, 1989, 103 Stat. 1514, 1515; Pub. L. 102–25, title VII, § 701(f)(4), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title X, § 1052(32), Oct. 23, 1992, 106 Stat. 2501, established defense industrial base office, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition''.

1996—Subsec. (a). Pub. L. 104–201, § 829(b)(1), substituted ''The Secretary of Defense'' for ''(1) The Secretary of Defense, in consultation with the National Defense Technology and Industrial Base Council,'' and struck out pars. (2) to (4) which read as follows:

''(2) As determined by the Secretary of Defense, the program shall be administered by one of the following:

''(A) An existing federally funded research and development center.

''(B) A consortium of existing federally funded research and development centers and other nonprofit entities.

''(C) A private sector entity (other than a federally funded research and development center).

''(D) The National Defense University.

''(3) A contract may be awarded under subparagraph (A), (B), or (C) of paragraph (2) only through the use of competitive procedures.

''(4) The Secretary of Defense shall ensure that there is appropriate coordination between the program and the Critical Technologies Institute.''

Subsec. (c)(3)(A). Pub. L. 104–201, § 829(b)(2), substituted ''the Secretary of Defense for'' for ''the National Defense Technology and Industrial Base Council in'' and struck out ''and the periodic plans required by section 2506 of this title'' after ''section 2505 of this title''.

DEADLINE FOR ESTABLISHING PROGRAM

Section 4213(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall establish the program required by section 2503 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Oct. 23, 1992]. The Secretary of Defense shall ensure that a contract solicitation is issued and a contract is awarded in a timely manner to facilitate the establishment of that program within the period set forth in the preceding sentence. The preceding sentence shall not apply if the Secretary determines that the program shall be administered by the National Defense University.''

§ 2504. Annual report to Congress

The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.

(2) A description of the methods and analyses being undertaken by the Department of Defense alone or in cooperation with other Federal agencies, to identify and address concerns regarding technological and industrial capabilities of the national technology and industrial base.

(3) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(Added Pub. L. 104–201, div. A, title VIII, § 829(e), Sept. 23, 1996, 110 Stat. 2614; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 2504, added Pub. L. 102–484, div. D, title XLII, § 4214(a), Oct. 23, 1992, 106 Stat. 2666, established Center for Study of Defense Economic Adjustment, prior to repeal by Pub. L. 103–160, div. A, title XIII, § 1312(a)(1), Nov. 30, 1993, 107 Stat. 1786.

Another prior section 2504 was renumbered section 2531 of this title.

AMENDMENTS

1999—Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

§ 2505. National technology and industrial base: periodic defense capability assessments

(a) PERIODIC ASSESSMENT.—Each fiscal year, the Secretary of Defense shall prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth in section 2501(a) of this title. The Secretary of Defense shall prepare such assessments in consultation with the Secretary of Commerce and the Secretary of Energy.

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) describe sectors or capabilities, their underlying infrastructure and processes;

(2) analyze present and projected financial performance of industries supporting the sectors or capabilities in the assessment;

(3) identify technological and industrial capabilities and processes for which there is potential for the national industrial and technology base not to be able to support the achievement of national security objectives; and

(4) consider the effects of the termination of major defense acquisition programs (as the term is defined in section 2430 of this title) or major automated information system pro-

grams (as defined in section 2445a of this title) in the previous fiscal year on the sectors and capabilities in the assessment.

(c) ASSESSMENT OF EXTENT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each assessment under subsection (a) shall include a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside of the United States and Canada and for which there is no immediately available source in the United States or Canada. The discussion and presentation regarding foreign dependency shall—

(1) identify cases that pose an unacceptable risk of foreign dependency, as determined by the Secretary; and

(2) present actions being taken or proposed to be taken to remedy the risk posed by the cases identified under paragraph (1), including efforts to develop a domestic source for the item in question.

(d) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that consideration of the technology and industrial base assessments is integrated into the overall budget, acquisition, and logistics support decision processes of the Department of Defense.

(Added Pub. L. 102–484, div. D, title XLII, § 4215, Oct. 23, 1992, 106 Stat. 2667; amended Pub. L. 103–35, title II, § 201(g)(7), May 31, 1993, 107 Stat. 100; Pub. L. 104–201, div. A, title VIII, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 111–23, title III, § 303(b), May 22, 2009, 123 Stat. 1731; Pub. L. 111–383, div. A, title VIII, § 895(c), Jan. 7, 2011, 124 Stat. 4314.)

PRIOR PROVISIONS

A prior section 2505 was renumbered section 2532 of this title.

AMENDMENTS

2011—Subsec. (b)(4). Pub. L. 111–383 inserted ''or major automated information system programs (as defined in section 2445a of this title)'' after ''section 2430 of this title)''.

2009—Subsec. (b)(4). Pub. L. 111–23 added par. (4).

1996—Pub. L. 104–201 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing for National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a comprehensive assessment of capability of the national technology and industrial base to attain national security objectives.

1993—Pub. L. 103–35 substituted ''capability'' for ''capabilty'' in section catchline.

STUDY OF BERYLLIUM INDUSTRIAL BASE

Pub. L. 108–136, div. A, title VIII, § 824, Nov. 24, 2003, 117 Stat. 1547, required the Secretary of Defense to conduct a study of the adequacy of the industrial base of the United States to meet defense requirements of the United States for beryllium and to submit a report on the results of the study to Congress not later than Mar. 31, 2005.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC ASSESSMENT

Section 4219 of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, § 202(a)(14), May 31, 1993, 107 Stat. 101, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2506. Department of Defense technology and industrial base policy guidance

(a) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in section 2501(a) of this title. Such guidance shall provide for technological and industrial capability considerations to be integrated into the strategy, management, budget allocation, acquisition, and logistics support decision processes.

(b) REPORT TO CONGRESS.—The Secretary of Defense shall report on the implementation of the departmental guidance in the annual report to Congress submitted pursuant to section 2504 of this title.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(a), Oct. 23, 1992, 106 Stat. 2668; amended Pub. L. 104–201, div. A, title VIII, § 829(d), Sept. 23, 1996, 110 Stat. 2613; Pub. L. 111–383, div. A, title VIII, § 895(d), Jan. 7, 2011, 124 Stat. 4314.)

PRIOR PROVISIONS

A prior section 2506 was renumbered section 2533 of this title.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''strategy, management, budget allocation,'' for ''budget allocation, weapons''.

1996—Pub. L. 104–201 substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (e) providing for the National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a multiyear plan for ensuring that the policies and programs of the Department of Defense, the Department of Energy, and other Federal departments and agencies were planned, coordinated, funded, and implemented in a manner designed to attain national security objectives.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC PLAN

Section 4220 of Pub. L. 102–484 set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

§ 2507. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only

after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under subsection (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''person'' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670; amended Pub. L. 103–160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 109–163, div. A, title X, § 1056(c)(5), Jan. 6, 2006, 119 Stat. 3439.)

PRIOR PROVISIONS

A prior section 2507 was renumbered section 2534 of this title.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–163 substituted ''subsection (a)'' for ''section (a)''.

1993—Pub. L. 103–160 inserted headings in subsecs. (a) to (f).

§ 2508. Industrial Base Fund

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Industrial Base Fund (in this section referred to as the ''Fund'').

(b) CONTROL OF FUND.—The Fund shall be under the control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy.

(c) AMOUNTS IN FUND.—The Fund shall consist of amounts appropriated or otherwise made available to the Fund.

(d) USE OF FUND.—Subject to subsection (e), the Fund shall be used—

(1) to support the monitoring and assessment of the industrial base required by this chapter;

(2) to address critical issues in the industrial base relating to urgent operational needs;

(3) to support efforts to expand the industrial base; and

(4) to address supply chain vulnerabilities.

(e) USE OF FUND SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to use the Fund under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(f) EXPENDITURES.—The Secretary shall establish procedures for expending monies in the Fund in support of the uses identified in subsection (d), including the following:

(1) Direct obligations from the Fund.

(2) Transfers of monies from the Fund to relevant appropriations of the Department of Defense.

(Added Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315.)

CODIFICATION

Pub. L. 111–383, div. A, title VIII, § 896(b)(1), Jan. 7, 2011, 124 Stat. 4315, which directed the addition of section 2508 at end of this chapter, was executed by adding this section at the end of subchapter II of this chapter to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2508 was renumbered section 2522 of this title and subsequently repealed.

A prior section 2509, added Pub. L. 101–510, div. A, title VIII, § 825(a), Nov. 5, 1990, 104 Stat. 1604; amended Pub. L. 102–484, div. A, title X, § 1052(34), Oct. 23, 1992, 106 Stat. 2501, required submission of defense industrial base annual reports, prior to repeal by Pub. L. 102–484, § 4202(a).

A prior section 2510, added Pub. L. 101–510, div. A, title VIII, § 826(a)(1), Nov. 5, 1990, 104 Stat. 1605, related to defense industrial base for textile and apparel products, prior to repeal by Pub. L. 102–484, § 4202(a).

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title X, § 1081(i)(2), Feb. 10, 1996, 110 Stat. 455, substituted ''program'' for ''partnerships'' in item 2511 and struck out items 2512 ''Commercial-military integration partnerships'', 2513 ''Regional technology alliances assistance program'', 2516 ''Military-Civilian Integration and Technology Transfer Advisory Board'', and 2520 ''Navy Reinvestment Program''.

1994—Pub. L. 103–337, div. A, title XI, § 1113(c), Oct. 5, 1994, 108 Stat. 2866, added items 2519 and 2520.

§ 2511. Defense dual-use critical technology program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 2501(a) of this title by encouraging and providing for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title in furtherance of the program. The Secretary shall identify projects to be conducted as part of the program.

(b) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide technical and other assistance to facilitate the achievement of the purposes of projects conducted under the program. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) for purposes of projects selected by the Secretary.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The total amount of funds provided by the Federal Government for a project conducted under the program may not exceed 50 percent of the total cost of the project. However, the Secretary of Defense may agree to a project in which the total amount of funds provided by the Federal Government exceeds 50 percent if the Secretary determines the project is particularly meritorious, but the project would not otherwise have sufficient non-Federal funding or in-kind contributions.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a project conducted under the program for the purpose of calculating the share of the project costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of project activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the project from non-Federal sources.

(3) The Secretary shall consider a project proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated project costs. Upon the selection of a project proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the project from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated project costs, the Secretary shall revoke the selection of the project proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the conduct of the program.

(e) SELECTION CRITERIA.—The criteria for the selection of projects under the program shall include the following:

(1) The extent to which the proposed project advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the proposed project.

(3) The qualifications of the personnel proposed to participate in the research activities of the proposed project.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed project other than through the project.

(5) The potential effectiveness of the project in the further development and application of each technology proposed to be developed by the project for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed project.

(7) The extent to which the project does not unnecessarily duplicate projects undertaken by other agencies.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; Pub. L. 104–106, div. A, title X, § 1081(c), Feb. 10, 1996, 110 Stat. 452.)

PRIOR PROVISIONS

A prior section 2511, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600; amended Pub. L. 102–190, div. A, title VIII, § 824(b), Dec. 5, 1991, 105 Stat. 1438, defined ''manufacturing technology'', ''manufacturing extension program'', and ''United States-based small manufacturing firm'' for purposes of former chapter 149 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2511 was renumbered section 2540 of this title and subsequently repealed.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''program'' for ''partnerships'' in section catchline and amended text generally. Prior to amendment, text related to program for establishment of cooperative arrangements between Department of Defense and eligible entities.

1994—Subsec. (c)(3). Pub. L. 103–337 added par. (3).

1993—Subsec. (c). Pub. L. 103–160, § 1315(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense shall ensure that, to the maximum extent he determines to be practicable, the amount of the funds provided by the Federal Government under a partnership does not exceed the total amount provided by non-Federal Government participants in that partnership.''

Subsec. (e). Pub. L. 103–160, § 1317(c), struck out '', except that procedures other than competitive procedures may be used in any case in which an exception set out in section 2304(c) of this title applies'' after ''partnerships''.

DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 105–85, div. A, title II, § 203, Nov. 18, 1997, 111 Stat. 1655, as amended by Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) FUNDING 1998.—Of the amounts authorized to be appropriated by section 201 [111 Stat. 1655], $75,000,000 is authorized for dual-use projects.

''(b) GOALS.—(1) Subject to paragraph (3), it shall be the objective of the Secretary of each military department to obligate for dual-use projects in each fiscal year referred to in paragraph (2), out of the total amount authorized to be appropriated for such fiscal year for the applied research programs of the military department, the percent of such amount that is specified for that fiscal year in paragraph (2).

''(2) The objectives for fiscal years under paragraph (1) are as follows:

''(A) For fiscal year 1998, 5 percent.

''(B) For fiscal year 1999, 7 percent.

''(C) For fiscal year 2000, 10 percent.

''(D) For fiscal year 2001, 15 percent.

''(3) The Secretary of Defense may establish for a military department for a fiscal year an objective different from the objective set forth in paragraph (2) if the Secretary—

''(A) determines that compelling national security considerations require the establishment of the different objective; and

''(B) notifies Congress of the determination and the reasons for the determination.

''(c) DESIGNATION OF OFFICIAL FOR DUAL-USE PROGRAMS.—(1) The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense to carry out responsibilities for dual-use projects under this subsection. The designated official shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(2) The primary responsibilities of the designated official shall include developing policy and overseeing the establishment of, and adherence to, procedures for ensuring that dual-use projects are initiated and administered effectively and that applicable commercial technologies are integrated into current and future military systems.

''(3) In carrying out the responsibilities, the designated official shall ensure that—

''(A) dual-use projects are consistent with the joint warfighting science and technology plan referred to in section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note); and

''(B) the dual-use projects of the military departments and defense agencies of the Department of Defense are coordinated and avoid unnecessary duplication.

''(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—The total amount of funds provided by a military department for a dual-use project entered into by the Secretary of that department shall not exceed 50 percent of the total cost of the project. In the case of a dual-use project initiated after the date of the enactment of this Act [Nov. 18, 1997], the Secretary may consider in-kind contributions by non-Federal participants only to the extent such contributions constitute 50 percent or less of the share of the project costs by such participants.

''(e) USE OF COMPETITIVE PROCEDURES.—Funds obligated for a dual-use project may be counted toward meeting an objective under subsection (a) only if the funds are obligated for a contract, grant, cooperative agreement, or other transaction that was entered into through the use of competitive procedures.

''(f) REPORT.—(1) Not later than March 1 of each of 1998, 1999, and 2000, the Secretary of Defense shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] on the progress made by the Department of Defense in meeting the objectives set forth in subsection (b) during the preceding fiscal year.

''(2) The report for a fiscal year shall contain, at a minimum, the following:

''(A) The aggregate value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research programs in the Department of Defense for that fiscal year.

''(B) For each military department, the value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research program of the military department for that fiscal year.

''(C) A summary of the cost-sharing arrangements in dual-use projects that were initiated during the fiscal year and are counted toward reaching an objective under this section.

''(D) A description of the regulations, directives, or other procedures that have been issued by the Secretary of Defense or the Secretary of a military department to increase the percentage of the total value of the dual-use projects undertaken to meet or exceed an objective under this section.

''(E) Any recommended legislation to facilitate achievement of objectives under this section.

''(g) COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE.—(1) The Secretary of Defense shall establish a Commercial Operations and Support Savings Initiative (in this subsection referred to as the 'Initiative') to develop commercial products and processes that the military departments can incorporate into operational military systems to reduce costs of operations and support.

''(2) Of the amounts authorized to be appropriated by section 201, $50,000,000 is authorized for the Initiative.

''(3) Projects and participants in the Initiative shall be selected through the use of competitive procedures.

''(4) The budget submitted to Congress by the President for fiscal year 1999 and each fiscal year thereafter pursuant to section 1105(a) of title 31, United States Code, shall set forth separately the funding request for the Initiative.

''(h) REPEAL OF SUPERSEDED AUTHORITY.—[Repealed section 203 of Pub. L. 104–201, 110 Stat. 2451.]

''(i) DEFINITIONS.—In this section:

''(1) The term 'applied research program' means a program of a military department which is funded under the 6.2 Research, Development, Test and Evaluation account of that department.

''(2) The term 'dual-use project' means a project under a program of a military department or a de-

fense agency under which research or development of a dual-use technology is carried out and the costs of which are shared by the Department of Defense and non-Government entities.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Section 1315(g) of Pub. L. 103–160 provided that in the case of projects funded under section 2511, 2512, 2513, 2523, or 2524 of this title with funds appropriated for a fiscal year beginning before Oct. 1, 1993, the amendments made by section 1315 of Pub. L. 103–160 would not alter the financial commitment requirements in effect on Nov. 30, 1993, for the non-Federal Government participants in the project.

[§§ 2512, 2513. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2512, added Pub. L. 102–484, div. D, title XLII, § 4222(a), Oct. 23, 1992, 106 Stat. 2679; amended Pub. L. 103–160, div. A, title XIII, § 1315(b), Nov. 30, 1993, 107 Stat. 1787; Pub. L. 103–337, div. A, title XI, § 1115(b), Oct. 5, 1994, 108 Stat. 2868, related to commercial-military integration partnerships.

A prior section 2512, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600, related to responsibility of Secretary of Defense to provide management and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Section 2513, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1428, § 2524; renumbered § 2513 and amended Pub. L. 102–484, div. D, title XLII, § 4223(a)–(f), Oct. 23, 1992, 106 Stat. 2681; Pub. L. 103–35, title II, § 201(d)(3), (e)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title XI, § 1182(g)(2), title XIII, §§ 1315(c), 1316, Nov. 30, 1993, 107 Stat. 1774, 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(c), Oct. 5, 1994, 108 Stat. 2868, related to regional technology alliances assistance program.

A prior section 2513, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601; amended Pub. L. 102–190, div. A, title II, § 203(c), Dec. 5, 1991, 105 Stat. 1314, required annual National Defense Manufacturing Technology Plan, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2514. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682; amended Pub. L. 104–201, div. A, title VIII, § 829(f), Sept. 23, 1996, 110 Stat. 2614.)

PRIOR PROVISIONS

A prior section 2514, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601, directed Secretary of Defense to enhance research relating to manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§ 4224(c), 4271(a)(2).

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–201 struck out par. (5) which read as follows: ''The Secretary shall coordinate the Program with the National Defense Technology and Industrial Base Council.''

NATIONAL ACTION PLAN ON ADVANCED SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Superconductivity research and development activities by Secretary of Defense and by Defense Advanced Research Projects Agency, see section 5207 of Title 15, Commerce and Trade.

TECHNOLOGY TRANSFER TO PRIVATE SECTOR

Pub. L. 100–180, div. A, title II, § 218(c), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall take appropriate action to ensure that high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector. Such transfer shall be made in accordance with section 10(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)), other applicable

provisions of law, and Executive Order Number 12591, dated April 10, 1987 [set out as a note under 15 U.S.C. 3710].

''(2) The Secretary of Energy, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer to the private sector of technology developed under the Department of Defense superconductivity program in the national laboratories.''

§ 2515. Office of Technology Transition

(a) ESTABLISHMENT.—The Secretary of Defense shall establish within the Office of the Secretary of Defense an Office of Technology Transition.

(b) PURPOSE.—The purpose of the office shall be to ensure, to the maximum extent practicable, that technology developed for national security purposes is integrated into the private sector of the United States in order to enhance national technology and industrial base, reinvestment, and conversion activities consistent with the objectives set forth in section 2501(a) of this title.

(c) DUTIES.—The head of the office shall ensure that the office—

(1) monitors all research and development activities that are carried out by or for the military departments and Defense Agencies;

(2) identifies all such research and development activities that use technologies, or result in technological advancements, having potential nondefense commercial applications;

(3) serves as a clearinghouse for, coordinates, and otherwise actively facilitates the transition of such technologies and technological advancements from the Department of Defense to the private sector;

(4) conducts its activities in consultation and coordination with the Department of Energy and the Department of Commerce; and

(5) provides private firms with assistance to resolve problems associated with security clearances, proprietary rights, and other legal considerations involved in such a transition of technology.

(d) BIENNIAL REPORT.—The Secretary of Defense shall submit to the congressional defense committees a biennial report on the activities of the Office. The report shall be submitted each even-numbered year at the same time that the budget is submitted to Congress by the President pursuant to section 1105 of title 31. The report shall contain a discussion of the accomplishments of the Office during the two fiscal years preceding the fiscal year in which the report is submitted.

(Added Pub. L. 102–484, div. D, title XLII, § 4225(a), Oct. 23, 1992, 106 Stat. 2683; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(22), Feb. 10, 1996, 110 Stat. 505; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(23), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 108–375, div. A, title X, § 1084(b)(3), Oct. 28, 2004, 118 Stat. 2060.)

PRIOR PROVISIONS

A prior section 2515, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to computer-integrated manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–375 struck out par. (1) designation before ''The Secretary'', substituted ''congressional defense committees'' for ''congressional committees specified in paragraph (2)'', and struck out par. (2) which read as follows: ''The committees referred to in paragraph (1) are—

''(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

''(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.''

2003—Subsec. (d). Pub. L. 108–136, § 1031(a)(23)(A), substituted ''Biennial'' for ''Annual'' in heading.

Subsec. (d)(1). Pub. L. 108–136, § 1031(a)(23)(B), substituted ''a biennial report'' for ''an annual report'' in first sentence, ''each even-numbered year'' for ''each year'' in second sentence, and ''during the two fiscal years'' for ''during the fiscal year'' in third sentence.

1999—Subsec. (d)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Annual Report'' for ''Reporting Requirement'' in heading, designated existing provisions as par. (1), substituted ''The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report on the activities of the Office. The report shall be submitted each year at the same time'' for ''The Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives an annual report on the activities of the Office at the same time'', and added par. (2).

SCHEDULE FOR ESTABLISHMENT OF OFFICE OF TECHNOLOGY TRANSITION

Section 4225(b) of Pub. L. 102–484 provided that: ''The Office of Technology Transition shall commence operations within 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SUBMISSION OF ANNUAL REPORT

Section 4225(c)(2) of Pub. L. 102–484 provided that: ''Notwithstanding section 2515(d) of title 10, United States Code (as added by subsection (a))—

''(A) the first report under that section shall be submitted not later than one year after the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) no additional report is necessary under that section in the fiscal year in which such first report is submitted.''

[§ 2516. Repealed. Pub. L. 104–106, div. A, title X, § 1081(g), Feb. 10, 1996, 110 Stat. 455]

Section, added Pub. L. 102–484, div. D, title XLII, § 4226(a), Oct. 23, 1992, 106 Stat. 2684; amended Pub. L. 103–35, title II, § 201(g)(8), May 31, 1993, 107 Stat. 100, related to Military-Civilian Integration and Technology Transfer Advisory Board.

A prior section 2516, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to enhancement of concurrent engineering practices in design and development of weapon systems, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2517. Office for Foreign Defense Critical Technology Monitoring and Assessment

(a) IN GENERAL.—The Secretary of Defense shall establish within the Office of the Assistant Secretary of Defense for Research and Engineering an office known as the ''Office for Foreign Defense Critical Technology Monitoring and Assessment'' (hereinafter in this section referred to as the ''Office'').

(b) RELATIONSHIP TO DEPARTMENT OF COMMERCE.—The head of the Office shall consult

closely with appropriate officials of the Department of Commerce in order—

(1) to minimize the duplication of any effort of the Department of Commerce by the Department of Defense regarding the monitoring of foreign activities related to defense critical technologies that have potential commercial uses; and

(2) to ensure that the Office is effectively utilized to disseminate information to users of such information within the Federal Government.

(c) RESPONSIBILITIES.—The Office shall have the following responsibilities:

(1) To maintain within the Department of Defense a central library for the compilation and appropriate dissemination of unclassified and classified information and assessments regarding significant foreign activities in research, development, and applications of defense critical technologies.

(2) To establish and maintain—

(A) a widely accessible unclassified data base of information and assessments regarding foreign science and technology activities that involve defense critical technologies, including, especially, activities in Europe and in Pacific Rim countries; and

(B) a classified data base of information and assessments regarding such activities.

(3) To perform liaison activities among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense, with appropriate agencies and offices of the Department of Commerce and the Department of State, and with other departments and agencies of the Federal Government in order to ensure that significant activities in research, development, and applications of defense critical technologies are identified, monitored, and assessed by an appropriate department or agency of the Federal Government.

(4) To ensure the maximum practicable public availability of information and assessments contained in the unclassified data bases established pursuant to paragraph (2)—

(A) by limiting, to the maximum practicable extent, restrictive classification of such information and assessments; and

(B) by disseminating to the National Technical Information Service of the Department of Commerce information and assessments regarding defense critical technologies having potential commercial uses.

(5) To disseminate through the National Technical Information Service of the Department of Commerce unclassified information and assessments regarding defense critical technologies having potential commercial uses so that such information and assessments may be further disseminated within the Federal Government and to the private sector.

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1430, § 2525; renumbered § 2517 and amended Pub. L. 102–484, div. D, title XLII, § 4227, Oct. 23, 1992, 106 Stat. 2685; Pub. L. 111–383, div. A, title IX, § 901(j)(4), Jan. 7, 2011, 124 Stat. 4324.)

PRIOR PROVISIONS

A prior section 2517 was renumbered section 2523 of this title and subsequently repealed.

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–383 substituted ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering''.

1992—Pub. L. 102–484 renumbered section 2525 of this title as this section and inserted ''Critical'' after ''Foreign Defense'' in subsec. (a).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

§ 2518. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2518 was renumbered section 2522 of this title and subsequently repealed.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2526 of this title as this section.

§ 2519. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations. A partnership may also include one or more additional Federal laboratories, institutions of high-

er education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 2371 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 2511(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 2511(e) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, §1113(a), Oct. 5, 1994, 108 Stat. 2864; amended Pub. L. 104–106, div. A, title X, §1081(d), Feb. 10, 1996, 110 Stat. 454.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §1081(d)(1), struck out ''referred to in section 2511(b) of this title'' after ''corporations''.

Subsec. (f). Pub. L. 104–106, §1081(d)(2), substituted ''section 2511(e)'' for ''section 2511(f)''.

[§ 2520. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section, added Pub. L. 103–337, div. A, title XI, §1113(b), Oct. 5, 1994, 108 Stat. 2865, related to Navy Reinvestment Program.

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, redesignated item 2525 as 2521 and added item 2522.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(5), Oct. 17, 1998, 112 Stat. 2136, struck out ''AND DUAL-USE ASSISTANCE EXTENSION PROGRAMS'' after ''TECHNOLOGY'' in subchapter heading.

1996—Pub. L. 104–106, div. A, title II, §276(b), title X, §1081(i)(3), Feb. 10, 1996, 110 Stat. 242, 455, struck out items 2521 ''National Defense Manufacturing Technology Program'', 2522 ''Defense Advanced Manufacturing Technology Partnerships'', 2523 ''Manufacturing extension programs'', and 2524 ''Defense dual-use assistance extension program'' and substituted ''Manufacturing Technology Program'' for ''Manufacturing Science and Technology Program'' in item 2525.

1994—Pub. L. 103–337, div. A, title II, §256(a)(2), Oct. 5, 1994, 108 Stat. 2704, substituted ''Manufacturing Science and'' for ''Industrial Preparedness Manufacturing'' in item 2525.

1993—Pub. L. 103–160, div. A, title VIII, §801(a)(2), Nov. 30, 1993, 107 Stat. 1701, added item 2525.

§ 2521. Manufacturing Technology Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Technology Program to further the national security objectives of section 2501(a) of this title through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems. The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program. The Under Secretary of Defense for Acquisition, Technology, and Logistics shall administer the program.

(b) PURPOSE OF PROGRAM.—The Secretary of Defense shall use the program—

(1) to provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) to direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) to improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

(4) to focus Department of Defense support for the development and application of advanced manufacturing technologies and processes for use to meet manufacturing requirements that are essential to the national defense, as well as for repair and remanufacturing in support of the operations of systems commands, depots, air logistics centers, and shipyards;

(5) to disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) to sustain and enhance the skills and capabilities of the manufacturing work force;

(7) to promote high-performance work systems (with development and dissemination of

production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) to ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(c) EXECUTION.—(1) The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(2) In the establishment and review of requirements for an advanced manufacturing technology or process, the Secretary shall ensure the participation of those prospective technology users that are expected to be the users of that technology or process.

(3) The Secretary shall ensure that each project under the program for the development of an advanced manufacturing technology or process includes an implementation plan for the transition of that technology or process to the prospective technology users that will be the users of that technology or process.

(4) In the periodic review of a project under the program, the Secretary shall ensure participation by those prospective technology users that are the expected users for the technology or process being developed under the project.

(5) In order to promote increased dissemination and use of manufacturing technology throughout the national defense technology and industrial base, the Secretary shall seek, to the maximum extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.

(6) In this subsection, the term ''prospective technology users'' means the following officials and elements of the Department of Defense:

(A) Program and project managers for defense weapon systems.

(B) Systems commands.

(C) Depots.

(D) Air logistics centers.

(E) Shipyards.

(d) COMPETITION AND COST SHARING.—(1) In accordance with the policy stated in section 2374 of this title, competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project. For a project for which the Government receives an offer from only one offeror, the contracting officer shall negotiate the ratio of contract recipient cost to Government cost that represents the best value to the Government.

(e) JOINT DEFENSE MANUFACTURING TECHNOLOGY PANEL.—(1) There is in the Department of Defense the Joint Defense Manufacturing Technology Panel.

(2)(A) The Chair of the Joint Defense Manufacturing Technology Panel shall be the head of the Panel. The Chair shall be appointed, on a rotating basis, from among the appropriate personnel of the military departments and Defense Agencies with manufacturing technology programs.

(B) The Panel shall be composed of at least one individual from among appropriate personnel of each military department and Defense Agency with manufacturing technology programs. The Panel may include as ex-officio members such individuals from other government organizations, academia, and industry as the Chair considers appropriate.

(3) The purposes of the Panel shall be as follows:

(A) To identify and integrate requirements for the program.

(B) To conduct joint planning for the program.

(C) To develop joint strategies for the program.

(4) In carrying out the purposes specified in paragraph (3), the Panel shall perform the functions as follows:

(A) Conduct comprehensive reviews and assessments of defense-related manufacturing issues being addressed by the manufacturing technology programs and related activities of the Department of Defense.

(B) Execute strategic planning to identify joint planning opportunities for increased cooperation in the development and implementation of technological products and the leveraging of funding for such purposes with the private sector and other government agencies.

(C) Ensure the integration and coordination of requirements and programs under the program with the Office of the Secretary of Defense and other national-level initiatives, including the establishment of information exchange processes with other government agencies, private industry, academia, and professional associations.

(D) Conduct such other functions as the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify.

(5) The Panel shall report to and receive direction from the Assistant Secretary of Defense for Research and Engineering on manufacturing technology issues of multi-service concern and application.

(6) The administrative expenses of the Panel shall be borne by each military department and Defense Agency with manufacturing technology programs in such manner as the Panel shall provide.

(f) FIVE-YEAR STRATEGIC PLAN.—(1) The Secretary shall develop a plan for the program that includes the following:

(A) The overall manufacturing technology goals, milestones, priorities, and investment strategy for the program.

(B) The objectives of, and funding for, the program for each military department and each Defense Agency that shall participate in the program during the period of the plan.

(2) The Secretary shall include in the plan mechanisms for assessing the effectiveness of the program under the plan.

(3) The Secretary shall update the plan on a biennial basis.

(4) Each plan, and each update to the plan, shall cover a period of five fiscal years.

(Added Pub. L. 103–160, div. A, title VIII, §801(a)(1), Nov. 30, 1993, 107 Stat. 1700, §2525; amended Pub. L. 103–337, div. A, title II, §256(a)(1), Oct. 5, 1994, 108 Stat. 2704; Pub. L. 104–106, div. A, title II, §276(a), title X, §1081(e), title XV, §1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; Pub. L. 105–85, div. A, title II, §211(a), (b), Nov. 18, 1997, 111 Stat. 1657; Pub. L. 105–261, div. A, title II, §213, Oct. 17, 1998, 112 Stat. 1947; Pub. L. 106–65, div. A, title II, §216, Oct. 5, 1999, 113 Stat. 543; renumbered §2521, Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title II, §213, Dec. 2, 2002, 116 Stat. 2481; Pub. L. 108–136, div. A, title X, §1031(a)(24), Nov. 24, 2003, 117 Stat. 1598; Pub. L. 110–181, div. A, title II, §238(a), Jan. 28, 2008, 122 Stat. 48; Pub. L. 111–84, div. A, title II, §212, Oct. 28, 2009, 123 Stat. 2225; Pub. L. 111–383, div. A, title IX, §901(a)(2), Jan. 7, 2011, 124 Stat. 4317.)

PRIOR PROVISIONS

A prior section 2521, added Pub. L. 102–484, div. D, title XLII, §4231(a), Oct. 23, 1992, 106 Stat. 2686, related to National Defense Manufacturing Technology Program, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2521, added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1426, defined terms for purposes of former chapter 150 of this title, prior to repeal and restatement in section 2491 [now 2500] of this title by Pub. L. 102–484, §§4202(a), 4203(a).

Another prior section 2521 was renumbered section 2540 of this title and subsequently repealed.

AMENDMENTS

2009—Subsecs. (e), (f). Pub. L. 111–84 added subsec. (e) and redesignated former subsec. (e) as (f).

2008—Subsec. (e). Pub. L. 110–181 added subsec. (e).

2003—Subsec. (e). Pub. L. 108–136 struck out heading and text of subsec. (e) which related to preparation and maintenance of a five-year plan for the Manufacturing Technology Program by the Secretary of Defense.

2002—Subsec. (e)(1). Pub. L. 107–314, §213(a), substituted ''prepare and maintain a five-year plan for the program.'' for ''prepare a five-year plan for the program which establishes—

''(A) the overall manufacturing technology goals, milestones, priorities, and investment strategy for the program; and

''(B) for each of the five fiscal years covered by the plan, the objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.''

Subsec. (e)(2). Pub. L. 107–314, §213(a), substituted ''establish'' for ''include'' in introductory provisions and amended subpars. (A) and (B) generally. Prior to amendment, text read as follows:

''(A) An assessment of the effectiveness of the program, including a description of all completed projects and status of implementation.

''(B) An assessment of the extent to which the costs of projects are being shared by the following:

''(i) Commercial enterprises in the private sector.

''(ii) Department of Defense program offices, including weapon system program offices.

''(iii) Departments and agencies of the Federal Government outside the Department of Defense.

''(iv) Institutions of higher education.

''(v) Other institutions not operated for profit.

''(vi) Other sources.''

Subsec. (e)(3). Pub. L. 107–314, §213(b), substituted ''biennially'' for ''annually'' and ''for each even-numbered fiscal year'' for ''for a fiscal year''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Pub. L. 106–398 renumbered section 2525 of this title as this section.

1999—Subsec. (a). Pub. L. 106–65, §216(a), in first sentence, inserted ''through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems'' after ''title''.

Subsec. (b)(4). Pub. L. 106–65, §216(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''to promote dual-use manufacturing processes;''.

Subsec. (c)(2) to (6). Pub. L. 106–65, §216(c), added pars. (2) to (4), redesignated former par. (2) as (5), and added par. (6).

Subsec. (d). Pub. L. 106–65, §216(d), struck out ''(A)'' before ''In accordance with'' in par. (1), redesignated par. (1)(B) as par. (2), substituted ''Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project.'' for ''For each grant awarded and each contract, cooperative agreement, or other transaction entered into on a cost-share basis under the program, the ratio of contract recipient cost to Government cost shall be determined by competitive procedures.'', and struck out former pars. (2) and (3) which required grants, contracts, cooperative agreements, and other transactions to be awarded or entered into on a cost-sharing basis unless the Secretary of Defense made certain determinations and specified as a goal that at least 25 percent of the funds available for the program for each fiscal year be used for grants, contracts, cooperative agreements, and other transactions on a cost-share basis under which the ratio of recipient cost to Government cost was two to one.

Subsec. (e)(2)(A). Pub. L. 106–65, §216(e)(1), inserted '', including a description of all completed projects and status of implementation'' before period at end.

Subsec. (e)(2)(C). Pub. L. 106–65, §216(e)(2), added subpar. (C).

1998—Subsec. (d)(1). Pub. L. 105–261, §213(a), designated existing provisions as subpar. (A), substituted ''In accordance with the policy stated in section 2374 of this title, competitive'' for ''Competitive'', and added subpar. (B).

Subsec. (d)(2). Pub. L. 105–261, §213(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpars. (B) and (C).

Subsec. (d)(3). Pub. L. 105–261, §213(c)(2), substituted ''As a goal, at least'' for ''At least'' and ''should'' for ''shall'' and inserted at end ''The Secretary of Defense, in coordination with the Secretaries of the military departments and upon recommendation of the Under Secretary of Defense for Acquisition and Technology, shall establish annual objectives to meet such goal.''

Subsec. (d)(4). Pub. L. 105–261, §213(c)(1), struck out par. (4) which read as follows: ''If the requirement of paragraph (3) cannot be met by July 15 of a fiscal year, the Under Secretary of Defense for Acquisition and Technology may waive the requirement and obligate the balance of the funds available for the program for that fiscal year on a cost-share basis under which the ratio of recipient cost to Government cost is less than two to one. Before implementing any such waiver, the Under Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives the reasons for the waiver.''

Subsec. (e)(2). Pub. L. 105–261, § 213(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The plan shall include an assessment of the effectiveness of the program.''

1997—Subsec. (c)(2). Pub. L. 105–85, § 211(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall seek, to the extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.''

Subsec. (e). Pub. L. 105–85, § 211(b), added subsec. (e).

1996—Pub. L. 104–106, § 276(a)(1), amended section catchline, as amended by Pub. L. 104–106, §§ 1503(a)(28), 1506, by striking out ''Science and'' after ''Manufacturing''.

Pub. L. 104–106, § 1503(a)(28), substituted ''Science and Technology Program'' for ''science and technology program'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 276(a)(2), struck out ''Science and'' after ''Manufacturing'' and inserted after first sentence ''The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program.''

Subsec. (b). Pub. L. 104–106, § 1081(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''PURPOSE.—The purpose of the program is to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

Subsec. (c). Pub. L. 104–106, § 276(a)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(C). Pub. L. 104–106, § 276(a)(4)(A), added subpar. (C).

Subsec. (d)(3), (4). Pub. L. 104–106, § 276(a)(4)(B), added pars. (3) and (4).

1994—Pub. L. 103–337 substituted ''Manufacturing science and technology program'' for ''Industrial Preparedness Manufacturing Technology Program'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish an Industrial Preparedness Manufacturing Technology program to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

CHANGE OF NAME

''Assistant Secretary of Defense for Research and Engineering'' substituted for ''Director of Defense Research and Engineering'' in subsec. (e)(5) on authority of section 901(a) of Pub. L. 111–383, set out as a note under section 131 of this title.

LIMITATION ON USE OF FUNDS FOR DEFENSE-WIDE MANUFACTURING SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 110–181, div. A, title II, § 214, Jan. 28, 2008, 122 Stat. 36, as amended by Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326, provided that: ''No funds available to the Office of the Secretary of Defense for any fiscal year may be obligated or expended for the defense-wide manufacturing science and technology program unless the Assistant Secretary of Defense for Research and Engineering ensures each of the following:

''(1) A component of the Department of Defense has requested and evaluated—

''(A) competitive proposals, for each project under the program that is not a project covered by subparagraph (B); and

''(B) proposals from as many sources as is practicable under the circumstances, for a project under the program if the disclosure of the needs of the Department of Defense with respect to that project would compromise the national security.

''(2) Each project under the program is carried out—

''(A) in accordance with the statutory requirements of the Manufacturing Technology Program established by section 2521 of title 10, United States Code; and

''(B) in compliance with all requirements of any directive that applies to manufacturing technology.

''(3) An implementation plan has been developed.''

[Pub. L. 111–383, div. A, title IX, § 901(*l*)(2), Jan. 7, 2011, 124 Stat. 4326, which directed amendment of section 214 of Pub. L. 110–181, set out above, by substituting ''Assistant Secretary of Defense for Research and Engineering'' for ''Director of Defense Research and Engineering'', was executed by making the substitution for ''Director, Defense Research and Engineering,'' to reflect the probable intent of Congress.]

INITIAL DEVELOPMENT AND SUBMISSION OF PLAN

Pub. L. 110–181, div. A, title II, § 238(b), Jan. 28, 2008, 122 Stat. 48, provided that:

''(1) DEVELOPMENT.—The Secretary of Defense shall develop the strategic plan required by subsection (e) [now (f)] of section 2521 of title 10, United States Code (as added by subsection (a) of this section), so that the plan goes into effect at the beginning of fiscal year 2009.

''(2) SUBMISSION.—Not later than the date on which the budget of the President for fiscal year 2010 is submitted to Congress under section 1105 of title 31, United States Code, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan specified in paragraph (1).''

HIGH-PERFORMANCE DEFENSE MANUFACTURING TECHNOLOGY RESEARCH AND DEVELOPMENT

Pub. L. 109–163, div. A, title II, subtitle D, Jan. 6, 2006, 119 Stat. 3175, as amended by Pub. L. 111–383, div. A, title IX, § 901(a)(2), Jan. 7, 2011, 124 Stat. 4317, provided that:

''SEC. 241. PILOT PROGRAM FOR IDENTIFICATION AND TRANSITION OF ADVANCED MANUFACTURING PROCESSES AND TECHNOLOGIES.

''(a) PILOT PROGRAM REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall conduct a pilot program under the authority of section 2521 of title 10, United States Code, to identify and transition advanced manufacturing processes and technologies the utilization of which would achieve significant productivity and efficiency gains in the defense manufacturing base.

''(b) CONSIDERATION OF DEFENSE PRIORITIES.—In carrying out subsection (a), the Under Secretary shall take into consideration the defense priorities established in the most current Joint Warfighting Science and Technology plan, as required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note).

''(c) IDENTIFICATION FOR TRANSITION.—In identifying manufacturing processes and technologies for transition to the defense manufacturing base under the pilot program, the Under Secretary shall select the most promising transformational technologies and manufacturing processes, in consultation with the Assistant Secretary of Defense for Research and Engineering, the Joint Defense Manufacturing Technology Panel, and other such entities as may be appropriate, including the Director of the Small Business Innovation Research Program.

''SEC. 242. TRANSITION OF TRANSFORMATIONAL MANUFACTURING PROCESSES AND TECHNOLOGIES TO DEFENSE MANUFACTURING BASE.

''(a) PROTOTYPES AND TEST BEDS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake the development of prototypes and test beds to validate the manufacturing processes and technologies selected for transition under the pilot program under section 241.

''(b) DIFFUSION OF ENHANCEMENTS.—The Under Secretary shall seek the cooperation of industry in adopting such manufacturing processes and technologies through the following:

''(1) The Manufacturing Extension Partnership Program.

''(2) The identification of incentives for industry to incorporate and utilize such manufacturing processes and technologies.

''SEC. 243. MANUFACTURING TECHNOLOGY STRATEGIES.

''(a) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may—

''(1) identify an area of technology where the development of an industry-prepared roadmap for new manufacturing and technology processes applicable to defense manufacturing requirements would be beneficial to the Department of Defense; and

''(2) establish a task force, and act in cooperation, with the private sector to map the strategy for the development of manufacturing processes and technologies needed to support technology development in the area identified under paragraph (1).

''(b) COMMENCEMENT OF ROADMAPPING.—The Under Secretary shall commence any roadmapping identified pursuant to subsection (a)(1) not later than January 2007.

''SEC. 244. REPORT.

''(a) IN GENERAL.—Not later than December 31, 2007, the Under Secretary of the Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions undertaken by the Under Secretary under this subtitle during fiscal year 2006.

''(b) ELEMENTS.—The report under subsection (a) shall include—

''(1) a comprehensive description of the actions undertaken under this subtitle during fiscal year 2006;

''(2) an assessment of effectiveness of such actions in enhancing research and development on manufacturing technologies and processes, and the implementation of such within the defense manufacturing base; and

''(3) such recommendations as the Under Secretary considers appropriate for additional actions to be undertaken in order to increase the effectiveness of the actions undertaken under this subtitle in enhancing manufacturing activities within the defense manufacturing base.

''SEC. 245. DEFINITIONS.

''In this subtitle:

''(1) DEFENSE MANUFACTURING BASE.—The term 'defense manufacturing base' includes any supplier of the Department of Defense, including a supplier of raw materials.

''(2) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term 'Manufacturing Extension Partnership Program' means the Manufacturing Extension Partnership Program of the Department of Commerce.

''(3) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term 'Small Business Innovation Research Program' has the meaning given that term in section 2500(11) of title 10, United States Code.''

TECHNICAL ASSISTANCE RELATING TO MACHINE TOOLS

Pub. L. 108–136, div. A, title VIII, §823, Nov. 24, 2003, 117 Stat. 1547, provided that:

''(a) TECHNICAL ASSISTANCE.—The Secretary of Defense shall publish in the Federal Register information on Government contracting for purposes of assisting machine tool companies in the United States and entities that use machine tools. The information shall contain, at a minimum, the following:

''(1) An identification of resources with respect to Government contracting regulations, including compliance procedures and information on the availability of counseling.

''(2) An identification of resources for locating opportunities for contracting with the Department of Defense, including information about defense contracts that are expected to be carried out that may require the use of machine tools.

''(b) SCIENCE AND TECHNOLOGY INITIATIVES.—The Secretary of Defense shall incorporate into the Department of Defense science and technology initiatives on manufacturing technology an objective of developing advanced machine tool capabilities. Such technologies shall be used to improve the technological capabilities of the United States domestic machine tool industrial base in meeting national security objectives.''

PARTICIPATION IN MANUFACTURING EXTENSION PROGRAM

Pub. L. 108–87, title VIII, §8062, Sept. 30, 2003, 117 Stat. 1086, provided that: ''Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act or hereafter in any other Act.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–248, title VIII, §8063, Oct. 23, 2002, 116 Stat. 1550.

Pub. L. 107–117, div. A, title VIII, §8068, Jan. 10, 2002, 115 Stat. 2262.

Pub. L. 106–259, title VIII, §8067, Aug. 9, 2000, 114 Stat. 689.

Pub. L. 106–79, title VIII, §8070, Oct. 25, 1999, 113 Stat. 1245.

Pub. L. 105–262, title VIII, §8070, Oct. 17, 1998, 112 Stat. 2312.

Pub. L. 105–56, title VIII, §8076, Oct. 8, 1997, 111 Stat. 1236.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8085], Sept. 30, 1996, 110 Stat. 3009–71, 3009–105.

Pub. L. 104–61, title VIII, §8064, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, §8071, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, §8083A, Nov. 11, 1993, 107 Stat. 1459.

Pub. L. 102–396, title IX, §9112, Oct. 6, 1992, 106 Stat. 1929.

§2522. Armament retooling and manufacturing

The Secretary of the Army is authorized by chapter 434 of this title to carry out programs for the support of armaments retooling and manufacturing in the national defense industrial and technology base.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.)

PRIOR PROVISIONS

A prior section 2522, added Pub. L. 102–190, div. A, title VIII, §823(a)(1), Dec. 5, 1991, 105 Stat. 1435, §2518; renumbered §2522 and amended Pub. L. 102–484, div. D, title XLII, §4232(a), (b), Oct. 23, 1992, 106 Stat. 2687, related to defense advanced manufacturing technology partnerships, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2522, added Pub. L. 101–189, div. A, title VIII, §841(b)(1), Nov. 29, 1989, 103 Stat. 1512, §2508; amended Pub. L. 101–510, div. A, title VIII, §821(a), Nov. 5, 1990, 104 Stat. 1597; Pub. L. 102–25, title VII, §701(g)(3), Apr. 6, 1991, 105 Stat. 115; renumbered §2522, Pub. L. 102–190, div. A, title VIII, §821(b)(1), Dec. 5, 1991, 105 Stat. 1431, required an annual defense critical technologies plan, prior to repeal by Pub. L. 102–484, §4202(a).

[§§ 2523, 2524. Repealed. Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2523, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, §2517; amended

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.

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 interagency 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, 1993 (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[1] (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)''.

[1] 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[1] 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)[1] 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.

[1] 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[1] of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(3) The term ''acquisition'' has the meaning provided in section 4[1] 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)[1] 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 enactment 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 foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 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 subsecs. (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 subsecs. (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 supplies 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) FEES.—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

§ 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-

lish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 475; amended Pub. L. 108–375, div. A, title X, §1084(d)(21), Oct. 28, 2004, 118 Stat. 2062.)

PRIOR PROVISIONS

A prior section 2540, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, §2511; renumbered §2521, Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, §823(a)(2), 104 Stat. 1600; renumbered §2540, Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, §821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1664(c)(2), 1691, Oct. 5, 1994, 108 Stat. 3012, 3026, effective Dec. 1, 1994. See section 18502 of this title.

Another prior section 2540 was renumbered section 2539a of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–375 inserted ‘‘, as in effect on that date’’ before period at end.

AUTHORITY TO ISSUE LOAN GUARANTEES

Pub. L. 108–287, title VIII, §8065, Aug. 5, 2004, 118 Stat. 985, provided that: ‘‘To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations [now Committee on Foreign Affairs] in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.’’

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–87, title VIII, §8066, Sept. 30, 2003, 117 Stat. 1087.

Pub. L. 107–248, title VIII, §8067, Oct. 23, 2002, 116 Stat. 1551.

Pub. L. 107–117, div. A, title VIII, §8073, Jan. 10, 2002, 115 Stat. 2264.

Pub. L. 106–259, title VIII, §8071, Aug. 9, 2000, 114 Stat. 690.

Pub. L. 106–79, title VIII, §8075, Oct. 25, 1999, 113 Stat. 1246.

Pub. L. 105–262, title VIII, §8075, Oct. 17, 1998, 112 Stat. 2314.

Pub. L. 105–56, title VIII, §8081, Oct. 8, 1997, 111 Stat. 1237.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8093], Sept. 30, 1996, 110 Stat. 3009–71, 3009–107.

Pub. L. 104–61, title VIII, §8075, Dec. 1, 1995, 109 Stat. 665.

REPORT ON DEFENSE EXPORT LOAN GUARANTEE PROGRAM

Pub. L. 104–106, div. A, title XIII, §1321(b), Feb. 10, 1996, 110 Stat. 477, provided that, not later than two years after Feb. 10, 1996, the President was to submit to Congress a report on the loan guarantee program established pursuant to this section.

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this subchapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

§ 2540c. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as ‘‘exposure fee’’) for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476; amended Pub. L. 106–398, §1 [[div. A], title X, §1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1081(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284, provided that:

''(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

''(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

''(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

''(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

''(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

''(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

''(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

''(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.''

§ 2540d. Definitions

In this subchapter:

(1) The terms ''defense article'', ''defense services'', and ''design and construction services'' have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term ''cost'', with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 477.)

SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

§ 2541. 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 establish a program under which the Secretary may issue guarantees assuring lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 2541d of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed $10,000,000, with respect to all borrowers.

(d) GOALS AND STANDARDS.—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258.)

PRIOR PROVISIONS

A prior section 2541 was renumbered section 2551 of this title.

Another prior section 2541 was renumbered section 2539b of this title.

§ 2541a. Fees charged and collected

(a) FEE REQUIRED.—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) AMOUNT OF FEE.—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) SPECIAL ACCOUNT.—(1) Such fees shall be credited to a special account in the Treasury.

(2) Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(3)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541b. Administration

(a) AGREEMENTS REQUIRED.—The Secretary of Defense may enter into one or more agreements, each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) TREATMENT OF COSTS.—The costs of such agreements shall be considered, for purposes of the special account established under section 2541a(c), to be costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541c. Transferability, additional limitations, and definition

The following provisions of subchapter VI of this chapter apply to guarantees issued under this subchapter:

(1) Section 2540a, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 2540b, providing limitations.

(3) Section 2540d(2), providing a definition of the term ''cost''.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 107–107, div. A, title X, §1048(a)(24), Dec. 28, 2001, 115 Stat. 1224.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''subchapter'' for ''subtitle'' in two places in introductory provisions.

§ 2541d. Reports

The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 108–136, div. A, title X, § 1031(a)(25), Nov. 24, 2003, 117 Stat. 1598.)

PRIOR PROVISIONS

Prior sections 2542 to 2550 were renumbered sections 2552 to 2560 of this title, respectively.

AMENDMENTS

2003—Pub. L. 108–136 struck out subsec. (a) designation and heading and struck out subsec. (b) which directed that the Secretary of Defense annually submit to Congress a report on the loan guarantee program under this subchapter.

CHAPTER 149—DEFENSE ACQUISITION SYSTEM

PRIOR PROVISIONS

A prior chapter 149, comprised of sections 2511 to 2518, relating to manufacturing technology, was repealed, except for sections 2517 and 2518, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2517 and 2518 of that chapter were renumbered sections 2523 and 2522, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4232(a), 4233(a), Oct. 23, 1992, 106 Stat. 2687, and were subsequently repealed.

Another prior chapter 149, comprised of section 2511, was successively renumbered chapter 150 of this title, comprised of section 2521, then chapter 152 of this title, comprised of section 2540 et seq.

A prior chapter 150, comprised of sections 2521 to 2526, relating to development of dual-use critical technologies, was repealed, except for sections 2524 to 2526, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2524, 2525, and 2526 of that chapter were renumbered sections 2513, 2517, and 2518, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4223(a), 4227(a), 4228, Oct. 23, 1992, 106 Stat. 2681, 2685. Section 2513 of this chapter was subsequently repealed.

Another prior chapter 150, comprised of section 2521, was renumbered chapter 152 of this title, comprised of section 2540 et seq.

§ 2545. Definitions

In this chapter:

(1) The term ''acquisition'' has the meaning provided in section 4(16)[1] of the Office of Federal Procurement Policy Act (41 U.S.C. 403(16)).

(2) The term ''defense acquisition system'' means the workforce engaged in carrying out the acquisition of property and services for the Department of Defense; the management structure responsible for directing and overseeing the acquisition of property and services for the Department of Defense; and the statutory, regulatory, and policy framework that guides the acquisition of property and services for the Department of Defense.

(3) The term ''element of the defense acquisition system'' means an organization that employs members of the acquisition workforce, carries out acquisition functions, and focuses primarily on acquisition.

(4) The term ''acquisition workforce'' has the meaning provided in section 101(a)(18) of this title.

(Added Pub. L. 111–383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4288.)

REFERENCES IN TEXT

Section 4(16) of the Office of Federal Procurement Policy Act, referred to in par. (1), means section 4(16) of Pub. L. 93–400, which was classified to section 403(16) of former Title 41, Public Contracts, and was repealed and restated as section 131 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.

PRIOR PROVISIONS

A prior section 2545 was renumbered section 2555 of this title.

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, § 860, Jan. 7, 2011, 124 Stat. 4287, provided that: ''This subtitle [subtitle F (§§ 860–896) of title VIII of div. A of Pub. L. 111–383, enacting this chapter and sections 139e, 1701a, 1722b, 1748, 1762, and 2508 of this title, amending sections 101, 1723, 1746, 2302, 2500, 2501, 2505, and 2506 of this title, enacting provisions set out as notes under sections 1723, 1748, 2222, 2302, 2306a, 2330, and 2501 of this title, amending provisions set out as notes under section 2371 of this title and section 637 of Title 15, Commerce and Trade, and repealing provisions set out as notes under sections 1701 and 1723 of this title] may be cited as the 'Improve Acquisition Act of 2010'.''

§ 2546. Civilian management of the defense acquisition system

(a) RESPONSIBILITY OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS.—Subject to the authority, direction and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall be responsible for the management of the defense acquisition system and shall exercise such control of the system and perform such duties as are necessary to ensure the successful and efficient operation of the defense acquisition system, including the duties enumerated and assigned to the Under Secretary elsewhere in this title.

(b) RESPONSIBILITY OF THE SERVICE ACQUISITION EXECUTIVES.—Subject to the direction of the Under Secretary of Defense for Acquisition, Technology, and Logistics on matters pertaining to acquisition, and subject to the authority, direction, and control of the Secretary of the military department concerned, a service acquisition executive of a military department shall be responsible for the management of elements of the defense acquisition system in that mili-

[1] See References in Text note below.