

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, which required the Secretary to review the definition of “produce” as used within subpart 252.2 of the defense supplement to the Federal Acquisition Regulation, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(57), Aug. 13, 2018, 132 Stat. 1850.

REVISION OF DOMESTIC NONAVAILABILITY DETERMINATIONS AND RULES

Pub. L. 110-181, div. A, title VIII, §804(h), Jan. 28, 2008, 122 Stat. 211, which provided that, with exceptions, any domestic nonavailability determination under section 2533b of this title would be reviewed and amended to comply with the amendments made by section 804 of Pub. L. 110-181, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(58), Aug. 13, 2018, 132 Stat. 1850.

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, which provided that the Secretary of Defense or the Secretary of a military department could accept specialty metals in an item produced, manufactured, or assembled in the United States before 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 this title, subject to certain conditions, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(59), Aug. 13, 2018, 132 Stat. 1850.

§ 2533c. Prohibition on acquisition of sensitive materials from non-allied foreign nations

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Defense may not—

(1) procure any covered material melted or produced in any covered nation, or any end item that contains a covered material manufactured in any covered nation, except as provided by subsection (c); or

(2) sell any material from the National Defense Stockpile, if the National Defense Stockpile Manager determines that such a sale is not in the national interests of the United States, to—

(A) any covered nation; or

(B) any third party that the Secretary reasonably believes is acting as a broker or agent for a covered nation or an entity in a covered nation.

(b) APPLICABILITY.—Subsection (a) shall apply to prime contracts and subcontracts at any tier.

(c) EXCEPTIONS.—Subsection (a) does not apply under the following circumstances:

(1) If the Secretary of Defense determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(2) To the procurement of an end item described in subsection (a)(1) or the sale of any covered material described under subsection (a)(1) by the Secretary outside of the United States for use outside of the United States.

(3) To the purchase by the Secretary of an end item containing a covered material that is—

(A) a commercially available off-the-shelf item (as defined in section 104 of title 41), other than—

(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED MATERIAL.—The term “covered material” means—

(A) samarium-cobalt magnets;

(B) neodymium-iron-boron magnets;

(C) tungsten metal powder;

(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy; and

(E) tantalum metals and alloys.

(2) COVERED NATION.—The term “covered nation” means—

- (A) the Democratic People’s Republic of North Korea;
- (B) the People’s Republic of China;
- (C) the Russian Federation; and
- (D) the Islamic Republic of Iran.

(3) END ITEM.—The term “end item” has the meaning given in section 2533b(m) of this title.

(Added Pub. L. 115–232, div. A, title VIII, §871(a), Aug. 13, 2018, 132 Stat. 1904; amended Pub. L. 116–92, div. A, title VIII, §849, Dec. 20, 2019, 133 Stat. 1508; Pub. L. 116–283, div. A, title VIII, §844(a), Jan. 1, 2021, 134 Stat. 3766.)

TRANSFER OF SECTION

Pub. L. 116–283, div. A, title XVIII, §§1801(d), 1870(d)(2), Jan. 1, 2021, 134 Stat. 4151, 4286, provided that, effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, this section is transferred to chapter 385 of this title, as added by section 1870(a) of Pub. L. 116–283, inserted after the table of sections at the beginning of subchapter III, and redesignated as section 4871 of this title. See Effective Date of 2021 Amendment note below.

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

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

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

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

See 2021 Amendment notes below.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 116–283, §844(a)(1), substituted “material mined, refined, separated, melted,” for “material melted”.

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

2019—Subsec. (a)(2). Pub. L. 116–92, §849(a), substituted “material” for “covered material” in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 116–92, §849(b), added subpar. (E).

EFFECTIVE DATE OF 2021 AMENDMENT

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

Amendment by section 1870(d)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

§ 2533d. Additional requirements pertaining to printed circuit boards

(a) IN GENERAL.—

(1) Beginning on January 1, 2023, the Secretary of Defense may not acquire a covered printed circuit board from a covered nation.

(2) Paragraph (1) shall not apply with respect to any acquisition of supplies or services below the micro-purchase threshold under section 2338 of this title.

(b) WAIVER.—

(1) The Secretary may waive the prohibition under subsection (a) if the Secretary determines in writing that—

(A) there are no significant national security concerns regarding counterfeiting, quality, or unauthorized access created by such waiver;

(B) the waiver is required to support national security; and

(C) a covered printed circuit board of satisfactory quality and sufficient quantity, in the required form, cannot be procured as and when needed from nations other than a covered nation at reasonable cost, excluding comparisons with non-market economies.

(2) Not later than 10 days after the Secretary provides a waiver under paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notice setting forth the reasoning for the waiver, together with a copy of the waiver itself.

(c) DEFINITIONS.—In this section:

(1) COVERED NATION.—The term “covered nation” means—

- (A) the Democratic People’s Republic of North Korea;
- (B) the People’s Republic of China;
- (C) the Russian Federation; and
- (D) the Islamic Republic of Iran.

(2) COVERED PRINTED CIRCUIT BOARD.—The term “covered printed circuit board” means any partially manufactured or complete bare printed circuit board or fully or partially assembled printed circuit board that—

(A) performs a mission critical function in any product or service that is not a commercial product or commercial service (as such terms are defined under sections 103 and 103a of title 41, respectively); or

(B) the Secretary designates as a covered printed circuit board, after reasonable notice, based on a determination that the designation is required to support national security.

(3) SECRETARY.—The term “Secretary” means the Secretary of Defense.

(d) RULEMAKING.—Not later than May 1, 2022, the Secretary shall promulgate regulations, after an opportunity for notice and comment, implementing this section.

(e) APPLICABILITY.—This section shall apply only with respect to contracts entered into after the issuance of a final rule implementing this section.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Department of Defense from entering into a contract with an entity that connects to the facilities of a third party, for the purposes of backhaul, roaming, or interconnection arrangements, on the basis of the noncompliance by the