

“(1) is not funded in the budget of the President for the fiscal year as submitted to Congress pursuant to section 1105 of title 31;

“(2) is necessary to address gaps or vulnerabilities in the national technology and industrial base; and

“(3) would have been recommended for funding through the budget referred to in paragraph (1) if—

“(A) additional resources had been available for the budget to fund the program, activity, or mission requirement; or

“(B) the program, activity, or mission requirement had emerged before the budget was formulated.”.

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

10 USC 2501
prec.

“2504a. Unfunded priorities of the national technology and industrial base: annual report.”.

SEC. 847. MITIGATING RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OF DEPARTMENT OF DEFENSE CONTRACTORS OR SUBCONTRACTORS.

10 USC 2509
note.

(a) DEFINITIONS.—In this section:

(1) BENEFICIAL OWNER; BENEFICIAL OWNERSHIP.—The terms “beneficial owner” and “beneficial ownership” shall be determined in a manner that is not less stringent than the manner set forth in section 240.13d–3 of title 17, Code of Federal Regulations (as in effect on the date of the enactment of this Act).

(2) COMPANY.—The term “company” means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

(3) COVERED CONTRACTOR OR SUBCONTRACTOR.—The term “covered contractor or subcontractor” means a company that is an existing or prospective contractor or subcontractor of the Department of Defense on a contract or subcontract with a value in excess of \$5,000,000, except as provided in subsection (c).

(4) FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE; FOCI.—The terms “foreign ownership, control, or influence” and “FOCI” have the meanings given those terms in the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

(b) IMPROVED ASSESSMENT AND MITIGATION OF RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE.—

(1) IN GENERAL.—In developing and implementing the analytical framework for mitigating risk relating to ownership structures, as required by section 2509 of title 10, United States Code, as added by section 845 of this Act, the Secretary of Defense shall improve the process and procedures for the assessment and mitigation of risks related to foreign ownership, control, or influence (FOCI) of contractors and subcontractors doing business with the Department of Defense.

Procedures.

(2) ELEMENTS.—The process and procedures for the assessment and mitigation of risk relating to ownership structures referred to in paragraph (1) shall include the following elements:

Requirements.
Disclosures.

(A) ASSESSMENT OF FOCI.—(i) A requirement for covered contractors and subcontractors to disclose to the Defense Counterintelligence and Security Agency, or its successor organization, their beneficial ownership and whether they are under FOCI.

Update.

(ii) A requirement to update such disclosures when changes occur to information previously provided, consistent with or similar to the procedures for updating FOCI information under the National Industrial Security Program Operating Manual (DOD 5220.22–M), or a successor document.

(iii) A requirement for covered contractors and subcontractors determined to be under FOCI to disclose contact information for each of its foreign owners that is a beneficial owner.

Deadline.

(iv) A requirement that, at a minimum, the disclosures required by this paragraph be provided at the time the contract or subcontract is awarded, amended, or renewed, but in no case later than one year after the Secretary prescribes regulations to carry out this subsection.

(B) RESPONSIBILITY DETERMINATION.—Consistent with section 2509 of title 10, United States Code, as added by section 845 of this Act, consideration of FOCI risks as part of responsibility determinations, including—

(i) whether to establish a special standard of responsibility relating to FOCI risks for covered contractors or subcontractors, and the extent to which the policies and procedures consistent with or similar to those relating to FOCI under the National Industrial Security Program shall be applied to covered contractors or subcontractors;

Procedures.

(ii) procedures for contracting officers making responsibility determinations regarding whether covered contractors and subcontractors may be under foreign ownership, control, or influence and for determining whether there is reason to believe that such foreign ownership, control, or influence would pose a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems involved with the contract or subcontract; and

(iii) modification of policies, directives, and practices to provide that an assessment that a covered contractor or subcontractor is under FOCI may be a sufficient basis for a contracting officer to determine that a contractor or subcontractor is not responsible.

(C) CONTRACT REQUIREMENTS, ADMINISTRATION, AND OVERSIGHT RELATING TO FOCI.—

(i) Requirements for contract clauses providing for and enforcing disclosures related to changes in FOCI or beneficial ownership during performance of the contract or subcontract, consistent with subparagraph (A), and necessitating the effective mitigation of risks related to FOCI throughout the duration of the contract or subcontract.

(ii) Pursuant to section 831(c), designation of the appropriate Department of Defense official responsible to approve and to take actions relating to award, modification, termination of a contract, or direction to modify or terminate a subcontract due to an assessment by the Defense Counterintelligence and Security Agency, or its successor organization, that a covered contractor or subcontractor under FOCI poses a risk to national security or potential risk of compromise.

(iii) A requirement for the provision of additional information regarding beneficial ownership and control of any covered contractor or subcontractor on the contract or subcontract.

(iv) Other measures as necessary to be consistent with other relevant practices, policies, regulations, and actions, including those under the National Industrial Security Program.

(c) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND SERVICES AND OTHER FORMS OF ACQUISITION AGREEMENTS.—

(1) COMMERCIAL PRODUCTS AND SERVICES.—The requirements under subsection (b)(2)(A) and (b)(2)(C) shall not apply to a contract or subcontract for commercial products or services, unless a designated senior Department of Defense official specifically requires the applicability of subsections (b)(2)(A) and (b)(2)(C) based on a determination by the designated senior official that the contract or subcontract involves a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems.

(2) RESEARCH AND DEVELOPMENT AND PROCUREMENT ACTIVITIES.—The Secretary of Defense shall ensure that the requirements of this section are applied to research and development and procurement activities, including for the delivery of services, established through any means including those under section 2358(b) of title 10, United States Code.

(d) AVAILABILITY OF RESOURCES.—The Secretary shall ensure that sufficient resources, including subject matter expertise, are allocated to execute the functions necessary to carry out this section, including the assessment, mitigation, contract administration, and oversight functions.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit or modify any other procurement policy, procedure, requirement, or restriction provided by law, including section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended by the Foreign Interference Risk Review Modernization Act of 2018 (subtitle A of title XVII of Public Law 115–232).

(f) AVAILABILITY OF BENEFICIAL OWNERSHIP DATA.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall establish a process to update systems of record to improve the assessment and mitigation of risks associated with FOCI through the inclusion and updating of all appropriate associated uniquely identifying information about the contracts and contractors and subcontracts and subcontractors in the Federal Awardee Performance and Integrity Information System

Deadline.

(FAPIS), administered by the General Services Administration, and the Commercial and Government Entity (CAGE) database, administered by the Defense Logistics Agency.

(2) LIMITED AVAILABILITY OF INFORMATION.—The Secretary of Defense shall ensure that the information required to be disclosed pursuant to this section is—

- (A) not made public;
- (B) made available via the FAPIS and CAGE databases; and
- (C) made available to appropriate government departments or agencies.

10 USC 2302
note.

SEC. 848. PROHIBITION ON OPERATION OR PROCUREMENT OF FOREIGN-MADE UNMANNED AIRCRAFT SYSTEMS.

(a) PROHIBITION ON AGENCY OPERATION OR PROCUREMENT.—The Secretary of Defense may not operate or enter into or renew a contract for the procurement of—

(1) a covered unmanned aircraft system that—

(A) is manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

(B) uses flight controllers, radios, data transmission devices, cameras, or gimbals manufactured in a covered foreign country or by an entity domiciled in a covered foreign country;

(C) uses a ground control system or operating software developed in a covered foreign country or by an entity domiciled in a covered foreign country; or

(D) uses network connectivity or data storage located in or administered by an entity domiciled in a covered foreign country; or

(2) a system manufactured in a covered foreign country or by an entity domiciled in a covered foreign country for the detection or identification of covered unmanned aircraft systems.

(b) EXEMPTION.—The Secretary of Defense is exempt from the restriction under subsection (a) if the operation or procurement is for the purposes of—

(1) Counter-UAS surrogate testing and training; or

(2) intelligence, electronic warfare, and information warfare operations, testing, analysis, and training.

(c) WAIVER.—The Secretary of Defense may waive the restriction under subsection (a) on a case by case basis by certifying in writing to the congressional defense committees that the operation or procurement is required in the national interest of the United States.

(d) DEFINITIONS.—In this section:

(1) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means the People’s Republic of China.

(2) COVERED UNMANNED AIRCRAFT SYSTEM.—The term “covered unmanned aircraft system” means an unmanned aircraft system and any related services and equipment.

SEC. 849. MODIFICATION OF PROHIBITION ON ACQUISITION OF SENSITIVE MATERIALS FROM NON-ALLIED FOREIGN NATIONS.

(a) EXPANSION OF MATERIALS COVERED BY PROHIBITION ON SALE FROM NATIONAL DEFENSE STOCKPILE.—Subsection (a)(2) of section 2533c of title 10, United States Code, is amended, in the