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PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

A Comprehensive Review Of The Fiscal Year 2026 National Defense Authorization Act's Substantial Impact On Federal Procurement Law

By Melissa Prusock, Moshe Schwartz, Eleanor Ross, Jordan Malone, Paul McQuade, and Mike Schaengold*

On December 18, 2025, 78 days after the October 1, 2025 start of Fiscal Year 2026, President Trump signed into law the National Defense Authorization Act for Fiscal Year 2026 (FY 2026 NDAA), Pub. L. No. 119-60, becoming the 65th consecutive fiscal year that an NDAA has been enacted. The timing of the FY 2026 NDAA's enactment is not unusual—eight of the last 10 NDAA's were enacted in December and the FY 2021 NDAA, Pub. L. No. 116-283, was not enacted until January 1, 2021. In the last 50 fiscal years, the NDAA has been enacted on average approximately 45 days after the beginning of the fiscal year.¹

The FY 2026 NDAA And The NDAA Process

The NDAA is primarily a policy bill and does not provide budget authority for the Department of Defense (DOD) to spend, but it does authorize the appropriation of budget authority. The amounts authorized by the NDAA are not binding on the appropriations process but can influence appropriations and serve as “a reliable indicator of congressional sentiment on funding for particular items.”² The FY 2026 NDAA authorized \$900.6 billion in funding for FY 2026, which is \$8 billion above the President's requested amount of \$892.6 billion, but below the amount sought in the Senate bill (S. 2296), which would have authorized approximately \$32 billion more than the President's request.

The House and Senate passed their respective versions of the FY 2026 NDAA, but there was no formal conference between the two chambers.

*Melissa Prusock (prusockm@gtlaw.com), Paul McQuade (mcquadep@gtlaw.com), Eleanor Ross (eleanor.ross@gtlaw.com), and Mike Schaengold (schaengoldm@gtlaw.com) are Shareholders in Greenberg Traurig's (GT's) Government Contracts Group, of which Mike was Chair or Co-Chair for 10 years. Moshe Schwartz (moshe@ethertonandassociates.com) is President of Etherton and Associates and the former Executive Director of the Section 809 Panel. Jordan Malone (jordan.malone@gtlaw.com) is an Associate in GT's Government Contracts Group.

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Instead, the House and Senate Armed Services committees held an “informal conference.” This is the “new normal.” Over the last five years, only the FY 2024 NDAA, Pub. L. No. 118-31, followed the “regular order,” whereby both the House and Senate passed their respective versions of the bill *and* appointed conferees to reconcile the two bills.³

As with prior NDAs, many of the FY 2026 NDAA’s procurement-related reforms and changes are located in “Title VIII—Acquisition Policy, Acquisition Management, and Related Matters.”⁴ However, unlike prior NDAs, the FY 2026 NDAA also includes many procurement-related reforms in “Title XVIII—Acquisition Reform.” There are 51 Title VIII provisions and 30 Title XVIII provisions (for a total of 81). The five most recent NDAs (FY 2025, 2024, 2023, 2022, and 2021) contained 72, 47, 55, 57, and 63 Title VIII provisions, respectively. While the impact and significance of an NDAA on federal procurement law cannot be measured by the total number of procurement-related provisions, this increase is consistent with the focus on acquisition reform within the administration and Congress over the last year. Additionally, the provisions impacting procurement are not limited to Titles VIII and XVIII. There are various provisions important to procurement law in other titles.⁵

Some of the FY 2026 NDAA’s provisions will not become effective until the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), or other relevant regulations are amended or new provisions are promulgated, which can sometimes take two to four years or longer. Various provisions that do not require regulations have delayed effective dates.

Consistent with the administration’s actions through Executive Orders over the last year, the FY 2026 NDAA took aim at the entire acquisition process, seeking to reorient acquisitions to focus on speed, best value, and weapon system readiness (§ 1801). It did this by making some major organizational moves, including significantly modifying the Joint Requirements Oversight Council (§ 1811), creating Portfolio Acquisition Executives (§ 1802), and elevating and empowering the Product Support Manager (§ 1803). The NDAA takes steps to streamline the acquisition process by strengthening commercial buying (§ § 1821–1825, 1827, and 1828), deleting dozens of acquisition provisions that are out of date or no longer applicable (§ 811), increasing key acquisition thresholds (§ § 1804 and 1806), and attempting to reduce burdens on contractors by, for example, requiring DOD to consider a wider range of past performance examples (§ 824), limiting flow downs for commercial product and services contracts (§ 1824), and exempting nontraditional defense contractors from cost accounting standard compliance (§ 1826).

Industrial base and supply chain are among the most prominent themes in terms of the number of provisions, with a focus on strengthening investments in the industrial base and expanding sources of production (§ § 832, 867, 914, 1841, and 1847), contested logistics and supply chains (§ § 334, 833, 871, and 872), and prohibiting purchases from and/or certain interactions with entities in China, Russia, North Korea, and/or Iran (§ § 843, 844, 847, 848, 850, and 1692 and Title LXXXV).

Technology is a growing focus of recent NDAs, with this year’s NDAA focusing on advanced manufacturing (§ § 221, 225, 1842, and 1846), cybersecurity (§ § 228,

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866, and 1513) and artificial intelligence (AI) (§ § 347, 350, 1512, and 1532).

These themes are a continuation of those in recent NDAs and are largely driven by the bipartisan and bicameral focus on China.

In his signing statement, President Trump observed that the FY 2026 NDAA “codifies aspects of over a dozen Executive Orders and actions taken by my Administration, including those focused on warfighter lethality, advancing homeland missile defense by fully supporting the Golden Dome for America plan, [and] restoring America’s airspace sovereignty,” though the FY 2026 NDAA only references five Executive Orders. However, the signing statement identifies more than 60 provisions that “raise concerns” (only two of which fall within Titles VIII or XVIII).⁶ The signing statement suggests the administration will not implement portions of various NDAA provisions related to funding restrictions, executive authority, and information disclosure requirements that it deems to inconsistent with presidential authority stating, for example, that it “will implement these provisions only to the extent that they are consistent with the President’s constitutional authority” or are “consistent with” his “authority as Commander in Chief.”⁷ While none of the provisions identified appear likely to directly impact procurement law or policy, this selective implementation of the FY 2026 NDAA could still potentially impact federal procurements.

We look to the Joint Explanatory Statement (JES),⁸ which accompanies the NDAA as “legislative history,” to “explain[] the various elements of the [House and Senate] conferees’ agreement” that led to the enacted FY 2026 NDAA.⁹ However, as noted, the House and Senate “did not establish a conference committee to resolve differences between the two [i.e., House and Senate] versions of the bill. Instead, HASC and SASC leaders negotiated a bicameral agreement based on the text passed by each chamber.”¹⁰ Nevertheless, FY 2026 NDAA § 5 provides that “[t]he joint explanatory statement regarding this [NDAA] . . . shall have the same effect with respect to the implementation of this [NDAA] as if it were a joint explanatory statement of a committee of conference.”¹¹

Important Provisions In The FY 2026 NDAA’s Titles VIII—Acquisition Policy, Acquisition Management, And Related Matters

Section 801, Assumption Of Uninsurable Risk On Certain Contracts

Section 801 amends 10 U.S.C.A. to add new § 3864, which provides that the secretary of defense (secretary) “shall ensure that a contractor is not required to assume the risk of loss for work” under a “classified, fixed-price type contract for the acquisition of a product” “if, due to the classified nature” of the contractor’s performance: (1) “such contractor is unable to obtain insurance for such risk of loss”; or (2) an insurance provider “is unable to process a claim . . . for loss of work in process.” This section is inapplicable “to the extent that such loss” is the result of (1) “willful misconduct or lack of good faith on the part of the [contractor’s] managerial personnel,” “including with respect to” subcontractor oversight, or (2) “contractor” “workmanship error.” DOD must issue an implementing DFARS provision by April 2026.

Section 802, Changes To Certain Documents

Section 802 amends 10 U.S.C.A. to add new § 4604, which requires that “[e]ach document referred to in a [DOD] contract or other agreement for procurement” “shall include a notation that—(1) provides the version of such document that is applicable to such contract or other agreement; and “(2) indicates whether any changes have been made to such document after the issuance of the solicitation pursuant to which such contract or other agreement was entered into.” With respect to any such “document” that does not include the “required” notation, “the version of the document that shall apply” “to such contract or other agreement” is the one “in effect at the time of the” applicable solicitation’s issuance.

Section 803, Pilot Program For Financing For Covered Activities

Under § 803, the secretary “may establish a pilot program to evaluate the feasibility, risks, and benefits of expanding [DOD] contract cost principles and procedures” “to allow for financing costs incurred for a covered activity under a” DOD contract or subcontract “to be considered allowable and allocable as a direct or indirect

cost.” (Emphasis added.) A “covered activity” includes a prime or subcontractor’s (1) management of “an inventory of completed products or components used in production,” (2) improvement of “inventory management of products or components necessary for sustainment or maintenance,” or (3) material expansion of “the capacity of production or sustainment and maintenance through capital expenditures.”

The “pilot program” “may treat financing costs” “as allowable and allocable as a direct or an indirect cost for such” contract or subcontract, provided such costs are (a) “reasonable in amount and consistent with prevailing market rates for similar financing”; (b) incurred “to pay a financing entity”; and (c) incurred for covered activity “performed in compliance with the applicable [DOD] requirements . . . for audits of material and inventory management.” DOD’s obligation under this provision “to make a payment” “is subject to the availability of appropriations for that purpose.” For this program, “a financing entity” is not “considered a subcontractor solely because of the participation of such financing entity in a covered activity.”

Section 804, Multiyear Procurement Authority For Covered Systems And Certain Munitions

Subject to 10 U.S.C.A. § 3501’s multiyear procurement requirements, § 804(a) states that the secretary “shall submit to Congress a request for a specific authorization to enter into multiyear contracts for the procurement of a” “major system” (as defined by 10 U.S.C.A. § 3041) if (1) “a decision has been made by the” secretary of defense or of a military department “to proceed to full-rate production for such” major system; and (2) such major system “is planned to maintain full-rate production for” “five or more consecutive years.” (Emphasis added.)

Section 804(b) further provides that the secretary of defense or of a military department “is authorized to enter into one or more multiyear contracts” “for the procurement of” at least 10 different missile systems and subsystems (e.g., “Tomahawk Cruise Missile systems,” “Joint Air-to-Surface Standoff Missile (‘JASSM’) systems”), which are also identified as “Munitions” and which “may be procured through modifications or extensions to any existing contract for such systems and subsystems.” Section 804(b)(3) reduces the number of required certifications and other conditions for such multiyear contracts,

while § 804(b)(4)(B) provides some additional requirements for the chronological order of certifications. After FY 2026, these multiyear procurements are “subject to the availability of appropriations.”

If, when executed, such multiyear contract allows for “the potential insertion of upgraded components or design changes [collectively, “changes”] that address obsolescence or producibility requirements, such” “changes may be included in the end product if, not later than 180 days before the insertion of such upgraded components or design changes,” the secretary of defense or of a military department “provides to the congressional defense committees a briefing on such” “changes, including a testing plan to ensure such” “changes will meet system requirements.”

This section and others (e.g., FY 2026 NDAA § 112, “Multiyear procurement authority for UH–60 Blackhawk aircraft,” § 128, “Multiyear procurement authority for Yard, Repair, Berthing, and Messing Barges”) are designed to provide contractors (and subcontractors) more long-term certainty with respect to planning and budgeting for procurements and investing in their defense capabilities. Lack of multi-year contracting authority has been frequently referenced as an impediment to investment in the U.S. defense industrial base.

Section 805, Addressing Insufficiencies In Technical Data

Section 805 requires DOD to address perceived gaps in access to technical data and software necessary for the repair and maintenance of “covered systems.” “Covered system” means major defense acquisition programs and certain rapid prototyping or fielding projects expected to meet the dollar threshold for major defense acquisition programs.

By March 2026, the secretary must “develop and implement a digital system to track, manage, and enable the assessment of covered data related to covered systems, and to verify the compliance of contractors and subcontractors with contract requirements related to technical data for covered systems.” “Covered data” “means technical data and computer software” necessary to repair and maintain covered systems at repair and overhaul depots, installations, or operating locations or to maintain core logistics/mobilization capabilities under 10 U.S.C.A. § 2464.

DOD must assess contract requirements for each covered system, “including requirements for both data delivered and data otherwise accessible by [DOD] on a non-deliverable basis.” The assessment should describe where the data is stored or accessed, evaluate compliance with “the marking and rights requirements for such covered data under or pursuant to the contract,” and categorize the rights in technical data delivered (e.g., limited or restricted rights, government purpose, specifically negotiated rights), including whether such data is subject to any “customized commercial license or a specially negotiated license.”

Where DOD identifies “any insufficiency in covered data that negatively affects the ability of the Secretary to effectively operate a covered system and maintain such covered system in a cost-effective manner,” DOD must address the insufficiency. If delivery or access to the data was required by the contract or agreement under review, DOD must address this with the relevant contractor(s), “including by receiving access to such covered data on a non-deliverable basis.” If covered data was not required under the contract, but DOD determines there is an insufficiency, it must request options from the contractor to address it. Such options may include access agreements, priced contract options, and negotiated direct licenses with subcontractors. DOD must allow contractors to propose terms for using commercially accepted valuation practices (e.g., income-based, cost-based, market-based pricing). Any terms offered by contractors should be commensurate with commercial practices.

Section 805 includes a requirement for quarterly updates to Congress “on progress made toward completing the requirements of this section,” a summary of findings, efforts to address insufficiencies, and “lessons learned to improve the actions of the Department in planning for and acquiring covered data related to covered systems.”

Notably absent from the FY 2026 NDAA and this section are the “right to repair” provisions that were considered as part of the House and Senate bills, which would have substantially altered existing intellectual property (IP) rights. These provisions were removed after original equipment manufacturers, among others, expressed concerns about potential loss of IP rights.

The JES expresses frustration with DOD on this topic,

stating that DOD’s technical data challenges “are not rooted in an insufficiency in the law, but rather insufficiencies in [DOD’s] planning and resourcing decisions made early in the acquisition phase related to the sustainment of the systems it procures, and in some cases [DOD’s] insufficient inspection, acceptance, and management of technical data that have been negotiated.”¹²

Section 811, Repeals Of Existing Law To Streamline The Defense Acquisition Process

Section 811 repeals and makes conforming amendments to 75 sections from prior NDAAs and title 10 of the U.S. Code. The JES states that these changes are intended “to reduce administrative complexity related to reporting mandates, expired pilot programs, outdated requirements, limitations, and other matters.”¹³

Section 812, Modifications To Current Defense Acquisition Requirements

Section 812 seeks to “enhance defense acquisition efficiency” by amending various statutes. The JES notes that “[t]hese changes include shifting acquisition criteria to emphasize best value, simplifying authorities and incentives, adjusting thresholds and approvals, and making certain pilot programs permanent.”¹⁴ Among the changes is an amendment to 10 U.S.C.A. § 3012 to provide that “full and open competition” requirements are satisfied for orders under General Services Administration schedule contracts if such orders result in the “best value” (defined in FY 2026 NDAA § 1801, discussed below) instead of the “lowest overall cost alternative.” Section 812 also makes permanent FY 2019 NDAA, Pub. L. No. 115-232, § 890’s pilot program to reform and accelerate contracting and pricing processes for contracts over \$50 million by “basing price reasonableness determinations on actual cost and pricing data for purchases of the same or similar products.”¹⁵

Section 814, Additional Amendments Related To Unfinalized Contractual Actions

Section 814 amends 10 U.S.C.A. § 3374 (“Unfinalized contractual actions: allowable profit”) by requiring that profit allowed on an unfinalized contractual action where final price is negotiated after substantial completion of performance reflects “the increased cost risk of the contractor with respect to any costs incurred

prior to the award of the undefinitized contractual action when such costs—(A) would have been directly chargeable to the contract if incurred after” award, and “(B) were incurred to meet an anticipated contract delivery schedule or anticipated contract price targets[.]” Section 814 further requires that profit reflect “the increased cost risk of the contractor with respect to negotiations continuing for more than 180 days beginning on the date on which the contractor submitted” a qualifying proposal to definitize the contract. DOD must amend the DFARS to carry out these requirements by April 17, 2026.

Section 824, Increasing Competition In Defense Contracting

Section 824(a) requires the secretary to “issue guidance” by December 2026 on (1) when DOD “should accept past performance on a wider range of projects, such as a requirement without much precedent, in order to have increased competition” “by including commercial or non-government projects as relevant past performance”; (2) “a means by which” DOD “may validate non-government past performance references, including by requiring” references to “attest to their authenticity”; and (3) “using alternative,” non-past performance evaluation methods “that may be appropriate for a requirement without much precedent, such as demonstrations and testing of technologies.” The JES clarifies that this is to “allow entities with little or no Federal Government past performance to provide and have evaluated alternative evidence of past performance.”¹⁶

Section 824(b) directs the secretary to convene the Defense Acquisition Regulations (DAR) Council by March 2026 to “make recommendations to identify and eliminate specific, unnecessary procedural barriers that disproportionately affect the ability of small business concerns and nontraditional defense contractors, to compete for [DOD] contracts,” with an emphasis on “streamlining documentation and qualification requirements.” With input from both within and outside DOD, the Council must “identify procurement policies and regulations that are obsolete, overly burdensome or restrictive, not adequately harmonized, or otherwise serve to create barriers to small business concerns and nontraditional defense contractors contracting with [DOD] or that unnecessarily increase bid and proposal costs.” The Council must also “identify legislative, regulatory, and

other actions to increase [DOD contract] competition and remove barriers to small business concerns and nontraditional defense contractors,” which the secretary (for non-legislative actions) must implement, as appropriate, by December 2027, along with a report to the congressional armed services committees.

Section 832, Enhancement of Defense Supply Chain Resilience, And Secondary Source Qualification

Section 865 of the FY 2025 NDAA, Pub. L. No. 118-159, established a process to rapidly qualify and approve alternate or additional sources of supply for industrial capabilities used in combat, such as energetic materials, solid rocket motors, unmanned systems, space systems, electrical components, and castings and forgings. Section 832 of the FY 2026 NDAA expands FY 2025 NDAA § 865 to cover capabilities for critical readiness parts and systems and parts with sole-source dependencies, excessive lead times, unreasonable pricing, or other supply chain issues. Each military department must establish Expedited Qualification Panels to ensure Source Approval Requests and Parts Manufacturer Approvals are completed within 14 days. Additionally, the Defense Logistics Agency Source Approval Request process must be updated to establish a uniform evaluation and acceptance methodology for aviation equipment with a qualified civil equivalent. Parts that were reviewed by civil aviation authorities will not be subject to additional reviews by DOD unless a military service systems commander approves a written justification that is submitted to the congressional defense committees.

Section 833, Interim National Security Waivers For Supply Chain Illumination Efforts

Section 833 provides that if a contractor discovers a noncompliant item in a supply chain using supply chain illumination efforts and promptly discloses it to the program manager responsible for such supply chain, the contractor may be eligible for an interim national security waiver to deliver a noncompliant end item. Items are noncompliant if covered by one of seven statutes requiring that certain items be purchased from U.S. sources and prohibiting provision of items from entities associated with China and other foreign countries of concern. The waiver must include a written determination containing (1) the preliminary facts and circumstances regarding the

noncompliant item and likely cause of noncompliance; (2) the types of end items the waiver will apply to; (3) a determination that the waiver does not present a security, safety, or flight risk; and (4) an assessment of program risk resulting from acceptance and use of an end item containing a noncompliant item. The determination must be submitted to the congressional defense committees within five days of the waiver's issuance. Contractors that receive waivers must develop and implement corrective action plans to ensure future compliance and demonstrate that procurement of the noncompliant item was neither willful nor knowing. The contractor must use reasonably expedient means to qualify an alternative compliant supplier. The waiver authority expires on January 1, 2028. A waiver issued before January 1, 2028, will apply to any contract for procurement of an end item entered into on or before such date.

Section 850, Phase-Out Of Computer And Printer Acquisitions Involving Entities Owned Or Controlled By China

Section 850 prohibits the secretary from acquiring any computer or printer if the manufacturer, bidder, or offeror is a covered Chinese entity, which is an entity or parent of an entity that is (1) identified as a Chinese Military Company under § 1260H of the FY 2021 NDAA, Pub. L. No. 116-283; (2) included in the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List published by the Department of the Treasury; (3) an agency or instrumentality of China, an entity headquartered in China, or an entity directly or indirectly owned or controlled by either of the above that is included on the (a) Entity List in Supplement No. 4 to 15 C.F.R. Part 744; (b) Denied Persons List in 15 C.F.R. § 764.3(a)(2); or (c) Military End User List in Supplement No. 7 to 15 C.F.R. Part 744. The section contemplates a phased implementation of the prohibition. At least 10% of the total number of acquired printers and computers must comply with the prohibition in FY 2026; 25% in FY 2027; 50% in 2028; and 100% in 2029.

Section 851, Prohibition On Contracting With Certain Biotechnology Providers

Section 851 embodies in part the unenacted “BioSecure Act,” which was intended to protect the U.S. biotech and related healthcare industries from potential supply chain disruptions and technical security risks

resulting from reliance on biotechnology services, supplies, and equipment of certain “biotechnology companies of concern.” Section 851 prohibits federal agencies from procuring or obtaining equipment or services produced or provided by such companies or entering into contracts with prime contractors that use, or know their subcontractors will use, such equipment or services for contracts with federal agencies. Federal grant and loan funds likewise cannot be used to “procure, obtain, or use” prohibited equipment or services or contract with entities that will use, or know their subcontractors will use, such equipment or services.

In 2024, a House-passed version of the BioSecure Act (which was not enacted) listed certain Chinese companies by name. However, § 851 defines “biotechnology companies of concern” more broadly without referencing specific companies.

By December 18, 2026, the Office of Management and Budget (OMB) Director must (1) publish a list of biotech companies of concern based on suggestions from the secretary prepared in consultation with certain other agencies, and (2) issue guidance within 180 days of publishing the list. OMB's list must include any entity that is (a) “subject to the administrative governance structure, direction, control, or operates on behalf of the government of a foreign adversary”; (b) “involved in the manufacturing, distribution, provision, or procurement of a biotechnology equipment or service”; and (c) “[p]oses a risk to the national security of the United States based on—(I) engaging in joint research with, being supported by, or being affiliated with a foreign adversary's military, internal security forces, or intelligence agencies; (II) providing multiomic data obtained via biotechnology equipment or services to the government of a foreign adversary; or (III) obtaining human multiomic data via the biotechnology equipment or services without express and informed consent.” Biotech companies of concern also include entities involved in the “manufacturing, distribution, provision, or procurement of any biotechnology equipment or service” that are on the Chinese Military Companies list published by DOD under FY 2021 NDAA, Pub. L. No. 116-283, § 1260H. The definition of biotech companies of concern extends to subsidiaries, parents, and successors of biotech companies of concern.

These prohibitions take effect 60 days (for § 1260H

listed companies) or 90 days (for OMB-listed companies) after the FAR is revised per § 851(h). The FAR must be revised within one year of OMB’s guidance, so the prohibitions will become effective by August or September 2028. Section 851 also provides that the prohibition will not apply to contracts in place prior to the effective date of the prohibition for five years after the FAR is revised.

Agency heads may issue one-year waivers (with potential one-time 180-day extensions) on a case-by-case basis. Waivers must be approved by the OMB Director. Waivers (with no time limit) may be issued for contracts, subcontracts, or transactions for the acquisition or provision of overseas health care services. Additionally, the prohibitions do not apply to certain intelligence activities, the acquisition or provision of overseas health care services for U.S. employees (including the uniformed services), covered beneficiaries, and certain contractor and subcontractor employees. It also does not apply to the use of lawfully compiled publicly or commercially available human multiomic data or services provided in direct response to a declared public health emergency.

Before OMB publishes its list, named companies must be notified and afforded 90 days to submit information and arguments as to why they should not be listed. This mechanism is not available for § 1260H listed companies (which can go through a separate process to seek removal from that list).

While there is time to prepare for § 851’s implementation, companies should start determining whether their supply chains (including lower tier subcontractors and suppliers) depend on services and equipment provided by “biotechnology companies of concern,” which may be challenging where Contract Development and Manufacturing Organizations or analytics vendors subcontract specialized services.

Section 866, Cybersecurity Regulatory Harmonization

Section 866 requires that, by June 1, 2026, the secretary, in coordination with the DOD chief information officer (CIO), the CIO of each military department and representatives from the military department service acquisition executives, must (1) “harmonize the cybersecurity requirements applicable to the defense industrial

base” across DOD; and (2) reduce the number of contract or agreement-specific requirements. The harmonization process must ensure that there are sufficient processes and governance structures to identify and “eliminate duplicative and inconsistent cybersecurity requirements and requirements unique to single contracts[.]” The harmonization procedures should include a structure for considering whether future proposed cybersecurity contractual requirements are duplicative of other applicable requirements; a process for coordinating, centralizing, approving, and publishing any proposed cybersecurity requirements not published in the *Federal Register*; and a mechanism for ensuring internal and external stakeholder visibility into the requirements. By December 31, 2026, and annually thereafter for three years, the DOD CIO must submit a report to the congressional defense committees describing efforts undertaken to implement these goals.

Section 874, Annual Report On DOD Contract Cancellations And Terminations

For FYs 2027 through 2031, § 874 requires the secretary “to submit to the congressional defense committees a report listing any [contract] cancellation or termination for the preceding fiscal year” “greater than the simplified acquisition threshold [SAT],” which is ordinarily \$350,000.¹⁷ This report must be submitted within 10 days of the President’s (typically, February) submission of “the budget to Congress pursuant to” 31 U.S.C.A. § 1105, for each of those respective fiscal years, with the submission in FY 2027 (for FY 2026 contracts) to also include a “description of any cancellation or termination of a contract” above the SAT for FY 2025.

The report must include (1) “[a]n identification of the unique Government identification number,” i.e., “Procurement Instrument Identification Number” or an “Indefinite Delivery Vehicle,” “for each contract cancelled or terminated”; (2) the “total value” of the contracts cancelled or terminated; (3) “[t]he total existing obligations against each such contract”; (4) the “termination settlement paid,” if any, “for cancelling or terminating a contract”; and (5) “[a] brief justification of the . . . cancellation or termination, disaggregated by contracts”—(a) “for which the requirement no longer exists” or “has decreased”; (b) “for which the requirement exists, but the contract did not meet requirements for” cost,

schedule or performance acceptability; or (c) that “do not align with the [secretary’s] priorities” or other rationale “as determined by” the secretary.

Some previous NDAs have made an effort to track certain contract cancellations or terminations.¹⁸

Section 875, Ability To Withhold Contract Payments During Pendency Of A GAO Bid Protest

Section 875 is designed to discourage perceived meritless Government Accountability Office (GAO) bid protests by incumbent DOD contractors where the automatic stay of contract performance enables the incumbent to obtain a bridge contract or contract modification to continue performing pending resolution of its protest. By June 2026, the secretary must revise the DFARS “to establish procedures for” DOD contracting officers to withhold up to 5% of payments to an incumbent contractor while the incumbent’s bid protest challenging a new or follow-on DOD award for the same or similar goods or services is pending if contract award has been stayed under 31 U.S.C.A. § 3553(c). The withheld payment(s) “shall be forfeited by the incumbent contractor upon the determination by [GAO] to dismiss such bid protest based on a lack of any reasonable legal or factual basis becoming a final determination.” The JES states that this section “*would authorize*” the secretary to withhold up to 5% “of certain payments to an incumbent contractor” (emphasis added), suggesting that such withholding is not mandatory.¹⁹

This provision (which only applies to GAO protests of DOD procurements) is part of persistent congressional efforts (e.g., in the FY 2017, 2018, 2021, and the 2025 NDAs) to constrain bid protests despite evidence that protests of federal procurements (including DOD) are relatively rare and more than 50% of GAO protests result in some form of corrective action (“effectiveness rate”).²⁰

There are various problems with and unanswered questions concerning § 875. For example, § 875(b)(5)(B) provides that a forfeiture can only be assessed when the agency “*was prohibited from awarding a new contract during the pendency of such bid protest under [31 U.S.C.A. §] 3553(c),*” which further states that “*a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with*

respect to such procurement from [GAO] and while the protest is pending.” (Emphasis added.) 31 U.S.C.A. § 3553(c) only pertains to pre-award protests,²¹ so § 875’s language confusingly suggests it does not cover post-award protests (where a protest is filed within 10 days of contract award (or 5 days of a required debriefing) and an automatic stay of performance occurs under 31 U.S.C.A. § 3553(d)(3)). Section 875(b)(2) also provides a definition for “covered contract,” but that term is not otherwise used in § 875.

As noted, § 875 provides for a forfeiture “upon the determination by [GAO] to dismiss such bid protest *based on a lack of any reasonable legal or factual basis becoming a final determination.*” (Emphasis added.) This language does not appear to apply where a protest is only partially or even mostly dismissed. Nor does it apply to U.S. Court of Federal Claims or agency-level protests. Given § 875’s ambiguities and gaps, contractors should carefully track the DFARS implementation of this section and may want to participate in 41 U.S.C.A. § 1707’s public comment process that should apply here.²²

Section 876, Indemnification Of Contractors Against Nuclear And Unusually Hazardous Risks

Under § 876, review of contractor requests submitted to a DOD contracting officer under Pub. L. No. 85-804,²³ “for indemnification against nuclear and unusually hazardous risks, including those involving the procurement of commercial nuclear technology, shall include, to the extent practicable, input from the Defense Contract Management Agency, including reviews of insurance markets and coverage availability from the Contractor Insurance/Pension Review group.” DOD’s review of such “indemnification request[s]” “shall be completed with a final decision on approval or denial, including an executed memorandum of decision,” within “90 days.” The secretary of each military department “shall delegate the authority to approve or deny indemnification requests . . . for contracts relating to advanced nuclear energy systems or components to such subordinate officials” as the secretary determines appropriate “to ensure the timely and effective execution[.]”

Section 877, Enhanced Security Strategy For Procurement Of Private Fifth-Generation Wireless Technology

Under § 877, by March 18, 2026, the secretary “shall require a contractor for a procurement related to fifth-generation wireless technology for private networks on military installations to provide” a hardware bill of materials and a “description of the implementation and operational use of zero trust principles and capabilities for such procurement.” The secretary must prioritize the use of private networks that employ Open-RAN approaches, including cloud-native capabilities when conducting such procurements.

Important Provisions In The FY 2026 NDAA Title XVIII—Acquisition Reform

Section 1801, Alignment Of The Defense Acquisition System With The Needs Of Members Of The Armed Forces

Section 1801 seeks to realign the defense acquisition system’s objectives and guidance around end-user needs, speed, and best value, continuing Congress’s multi-year effort to move away from lowest-price technically acceptable source selection in favor of rapid, iterative, and modular procurement approaches that prioritize reduced lifecycle and sustainment costs. It requires the secretary to ensure the acquisition system “expeditiously provides the armed forces with the capabilities necessary to operate effectively, to address evolving threats, and to sustain the military advantage . . . in the most cost-effective manner practicable.” The secretary must issue guidance consistent with this requirement that “prioritizes the needs of end users,” and “is validated by direct engagement, experimentation, and iteration.” The secretary must “revise [DOD] Directive 5000.01 and any other relevant instructions, policies, or guidance” by June 16, 2026.

The guidance must require, among other things, (1) “[a] leadership culture and organizational structure that empowers individuals . . . and encourages appropriate delegation authority, collaboration, and mission-focused risk-taking”; (2) a sufficient number of properly trained acquisition workforce members, with workforce development and training that “balance[s] . . . functional and technical skills with skills in cross-functional integration, critical thinking, and innovative approaches”; (3) re-

source decisions prioritizing best value and balancing “life-cycle costs, schedule, performance, and quantity through continuous tradeoff analysis informed by prototyping and direct feedback from end users”; (4) “advanced approaches in digital engineering, model-based engineering, and simulation environments to enable rapid, iterative designs and technology insertion to maximize mission outcomes”; and (5) “[a]ctive pursuit of innovative solutions to enhance effectiveness of the armed forces and responsiveness to emerging threats, including the acquisition and integration of” commercial products and services.

Notably, § 1801 redefines “best value” as “with respect to an acquisition, the optimal combination of cost, quality, technical capability or solution quality, and delivery schedule.”²⁴ Section 1801 defines “cost effective” to mean “delivering superior end-user results at equal or lower cost compared to alternatives.” Section 1801 also ties service acquisition executive responsibilities directly to 10 U.S.C.A. § 3102 and enumerates six operationally focused duties, including: “(1) implement[ing] strategies to adapt rapidly to evolving end-user requirements . . . ; (2) us[ing] data analytics to manage trade-offs among lifecycle costs, delivery schedules, performance objectives, technical feasibility, and procurement quantity objectives to maximize best value for the end user; (3) conduct[ing] iterative cycles to develop, test with end-users, and terminate capabilities that deviate from priorities or significantly exceed cost or schedule thresholds; (4) notify[ing] the Joint Requirements Oversight Council within 30 days after changes to a defense acquisition program that result in a material difference in capability requirements, procurement quantities, or delivery schedules; (5) assign[ing] personnel to critical acquisition positions . . . to build expertise and accountability, equipping such personnel with strategies to empower teams, delegate authority, and embrace mission-focused risk-taking; and (6) foster[ing] mutual transparency and cooperation between the Government and private sector entities and require[ing] collaboration with such entities to ensure delivery of safe, suitable, and effective systems on relevant timelines and on established cost baselines.”

Section 1801 revises the acquisition-related functions of the service chiefs to emphasize (1) developing “capability requirement statements” that describe operational problems, propose nonprescriptive solutions, and ensure

interoperability “between and among joint military capabilities”; (2) implementing strategies to support timely adjustments to such requirements; (3) advising on tradeoffs to maximize best value for end-users; (4) making personnel available to provide end-user feedback; and (5) making recommendations to modify or terminate capabilities misaligned with priorities or suffering from significant cost growth, technical or performance deficiencies, or schedule delays.

Section 1802, Establishment Of The Role Of Portfolio Acquisition Executive

Section 1802 establishes the “portfolio acquisition executive” (PAE) as “the senior acquisition official designated by the component acquisition executive or the service acquisition executive of the military department concerned . . . to lead a portfolio of capabilities, with authority for plans, budgets, and execution of programs assigned to the portfolio, including life-cycle management.” It seeks to ensure “streamlined accountability” by providing that: “(1) [e]ach program manager . . . shall report directly to the portfolio acquisition executive . . . unless otherwise directed by the component acquisition executive or service acquisition executive”; “(2) [e]ach portfolio acquisition executive shall report directly to the component acquisition executive or the service acquisition executive”; and “(3) [t]he component acquisition executive or service acquisition executive . . . shall oversee the designation of, performance of, and resource allocation for all [PAEs].” The JES explains that the PAE and this reporting structure are intended “to reduce bureaucracy, not to add an additional layer of bureaucracy.” The JES indicates Congress believes PAEs will enable DOD “to transition from managing acquisitions on a program by program basis to managing portfolios of programs to better deliver capabilities to end-users.”²⁵

PAEs must (1) ensure activities are aligned with, and conducted in a manner that supports, the defense acquisition system objectives in § 1801, (2) manage the portfolio acquisition workforce and implement the secretary’s policies in the portfolio; (3) coordinate with service chiefs “when evaluating, modifying, or implementing requirements determinations, performance objectives, procurement quantity objectives, and materiel readiness objectives”; (4) “liaise and collaborate directly with

operational users” “to receive regular feedback” and ensure capability effectiveness and suitability; (5) provide timely information on “cost, schedule, and performance trade-offs”; (6) “employ iterative development cycles” with “authority to modify, discontinue, or terminate the development of capabilities” that no longer align with capability requirements or face “significant cost growth, technical or performance deficiencies,” or schedule delays; (7) collaborate with DOD mission engineering functions “to coordinate integration of emerging technologies, prototypes, and operational concepts” across services; and (8) “ensure effective market research and, to the maximum extent practical, prioritize (A) transactions for prototype projects under” 10 U.S.C.A. § 4022 and (B) procurement of commercial products and services, consistent with prior efforts to favor commercial products and services and increase use of other transaction agreements.

Personnel and resources assigned to the PAE will include contracting and contract management, cost estimating, financial management and business, life-cycle management and product support, program management, engineering and technical management, and development testing and evaluation. Such personnel must be under the PAE’s authority and control (subject to the component or service acquisition executive) and “shall not be provided through matrixed, collateral duty, or dual-reporting arrangements,” unless authorized by the relevant secretary in writing. The JES states that, for portfolio management to be effective, PAEs must have “functional support from the disparate stakeholders of the acquisition system . . . and be empowered to make decisions across all of these areas.”²⁶

Section 1803, Amendments To Life-Cycle Management And Product Support

Section 1803 creates a new 10 U.S.C.A. § 1733, expanding and clarifying the responsibilities of the product support manager, which is now defined as “the individual responsible for managing product support required to field and maintain the readiness and operational capability of a covered system throughout the life cycle.” Covered systems include major defense acquisition programs, major subprograms, and certain rapid prototyping or fielding projects meeting major defense acquisition program thresholds. “[P]roduct support” means “the

package of support functions required to field and sustain the readiness and operational capability of covered systems.”

The product support manager must have specified training and certifications, is “coequal with the program manager . . . and report[s] directly to the portfolio acquisition executive[.]” The product support manager must “seek to achieve” the objectives of the defense acquisition system described in § 1801 and “identify, develop, implement, incentivize, and measure quantifiable best value outcome-based product support that optimizes life-cycle cost, readiness, and operational capability.” Specific responsibilities include (1) “[d]eveloping and executing the product support strategy”; (2) “[p]roviding product support and subject matter expertise to the relevant program manager and portfolio acquisition executive”; (3) collaborating with engineers to create the life cycle sustainment plan and product support strategy; (4) “[a]dopting predictive analytics and simulation and modeling tools to improve materiel availability and reliability, increase operational availability rates, and reduce operation and sustainment costs”; (5) “[c]onducting product support business case analyses” before Milestone B “to provide a structured, iterative methodology” and make “data-informed recommendations that balance requirements with affordability”; (6) “[r]eviewing and recommending resource allocations across product support integrators and product support providers”; (7) “[c]oordinating product support arrangements between product support integrators and product support providers”; (8) “[s]eeking to resolve issues relating to diminishing manufacturing supply, material shortages, [and] critical readiness items of supply”; (9) “[m]anaging the end-to-end coordination process related to qualification, certification, and testing for alternative sources”; and (10) “[e]nsuring the evaluation and selection of product support integrators and product support providers that are best suited to execute the product support strategy.” Critical readiness items of supply are parts and systems designated (a) “as Mission Impaired Capability Awaiting Parts, Not Mission Capable Supply, or Casualty Report Category 3 or 4 status” (as defined by the secretary of defense or a military department); or (b) by the secretary “as negatively impacting the materiel readiness objectives of a covered system.”

Section 1804, Adjustments To Certain Acquisition Thresholds

Section 1804 will raise important acquisition thresholds, significantly reducing burdens on certain contractors and subcontractors. For example, the Truthful Cost and Pricing Data Act (popularly known as the Truth in Negotiations Act or TINA) threshold for submission of certified cost or pricing data for applicable DOD negotiated contracts (e.g., where only one offer is expected) entered into after June 30, 2026, will be increased from (an inflation adjusted) \$2.5 million to \$10 million. For prime contracts entered into after June 30, 2026, the subcontract threshold for certified cost or pricing data also will become \$10 million. The \$2.5 million (inflation adjusted) threshold still applies to subcontracts awarded after June 30, 2026, under prime contracts that were entered into on or before that date. Other thresholds will increase for approving the use of other than competitive procedures (e.g., sole-source awards) including allowing the contracting officer to make non-competitive awards up to \$100 million (instead of \$10 million) without approval of a senior agency official. Certain thresholds for designation as a “Major System,”²⁷ which includes civilian agencies, and “Major Defense Acquisition Program,”²⁸ will also be significantly increased.

Section 1806, Matters Related To Cost Accounting Standards

By June 2026, § 1806 requires the administrator for federal procurement policy to raise (1) the threshold for full Cost Accounting Standards (CAS) coverage for federal contract and subcontract awards from \$50 million to \$100 million,²⁹ and (2) the threshold for CAS applicability (i.e., modified CAS coverage) from (an inflation adjusted) \$2.5 million to \$35 million. The current CAS “trigger” mechanism, which requires the contractor or subcontractor to receive at least one CAS-covered contract or subcontract of \$7.5 million or more before other contracts or subcontracts become CAS-covered, will be eliminated.³⁰ In addition, this section provides that a “portion of a contract or subcontract” may be exempt if it satisfies a specific condition (e.g., an acquisition of a commercial product or service or firm-fixed-price contract) even if the contract on the whole is not otherwise exempt.

By April 2026, the secretary shall “update” the DFARS

to require full CAS compliance “only for an entity or subsidiary of an entity that” (a) “received a single contract award under such [CAS]” of \$100 million or more, or (b) “received contracts during the” preceding cost accounting period of \$100 million or more.

By March 2026, the JES “direct[s]” (1) the secretary to “conduct a review to identify actions to streamline [DOD’s] implementation of compliance with requirements associated with the [CAS],” which includes briefing the House and Senate Armed Services Committees “on the findings of the review and progress made in updating associated policies and regulations”; and (b) the Comptroller General to “provide a briefing to” relevant House and Senate committees “on the progress made in implementing the requirements of this section.”³¹

Section 1807, Establishment Of Project Spectrum

Section 1807 codifies Project Spectrum, a DOD initiative to provide small- and medium-sized entities an online platform of digital resources, training, and services that increase awareness of, and facilitate compliance with, the requirements of the defense acquisition system. The program’s focus is increasing awareness of cybersecurity risks and providing assistance with cybersecurity compliance requirements. The director of small business programs must coordinate with other DOD elements to ensure the resources, training, or services made available through the project are aligned with DOD-wide policies and guidance. The director, in consultation with other DOD elements, must establish performance metrics to measure the outcomes of the project, which must address cybersecurity and foreign ownership, control, or influence-related activities and tools and brief the congressional armed services committees on the metrics by May 1, 2026. Project Spectrum sunsets on December 31, 2031.

Section 1821, Modifications To Relationship Of Other Provisions Of Law To Procurement Of Commercial Products And Commercial Services

Section 1821 amends 10 U.S.C.A. § 3452 to require that the DFARS include lists of defense-unique contract clauses (based on statute, executive order, or acquisition policy) that *may* be applied to (1) DOD contracts for commercial products and services, (2) subcontracts for com-

mercial products/services, and (3) contracts or subcontracts for commercially available off-the-shelf (COTS) items. Prior to the revision, 10 U.S.C.A. § 3452 required the DFARS to include lists of defense-unique statutes and clauses that *did not* apply to commercial contracts, subcontracts, and COTS purchases.

This section directs the secretary to ensure the lists include clauses implementing the following statutes: (1) 10 U.S.C.A. Chapter 385 (Other Technology Base Policies and Programs, which includes defense trade reciprocity and offset policy and limitations on procurements from foreign sources); (2) FY 2023 NDAA, Pub. L. No. 117-263, § 5949 (Prohibition on Certain Semiconductor Products and Services);³² (3) FY 2024 NDAA, Pub. L. No. 118-31, § 805 (Prohibition of DOD Procurement Related to Entities Identified as Chinese Military Companies Operating in the United States);³³ or (4) “a statute that specifically refers to” 10 U.S.C.A. § 3452, as amended by § 1821, “and provides that, notwithstanding this section, such statute shall be applicable to contracts for the procurement of commercial products and commercial services.”

Section 1822, Modifications To Commercial Products And Commercial Services

Section 1822 requires agency heads to establish a formal “process for determinations regarding the non-availability of commercial products or commercial services.” The process must include a requirement that a non-commercial product or service may *not* be procured until the head of the agency determines that, based on market research, no suitable commercial product, service, or nondevelopmental item meets the agency’s needs. The program manager must submit a written memorandum, signed by the portfolio acquisition executive, explaining the decision based on market research and requirements analyses before using non-commercial solicitation procedures. The agency head must ensure that the nonavailability determinations do not “inhibit the ability of a contracting officer to determine whether a product, component of a product, or service is a commercial product or commercial service[.]”

Section 1822 also amends 10 U.S.C.A. § 3456, which governs DOD’s centralized capability that provides commercial acquisition support. Under 10 U.S.C.A. § 3456(a)(2), the centralized capability must now assist

the military departments and defense agencies with market research performed under 10 U.S.C.A. § 3453 (as amended by § 1822) and “the determination regarding the non-availability of commercial products or commercial services, and other analysis, used to determine the reasonableness of price.” In addition, § 1822 expands responsibility for acquiring commercial services, commercial products, or nondevelopmental items other than commercial products “to the maximum extent practicable” to “acquisition officials . . . and prime contractors and subcontractors (at any tier) performing contracts with such agency (including those performing consulting, research, and advisory services to acquisition officials of such agency).”

Section 1824, Limitation On Required Flowdown Of Contract Clauses To Subcontractors Providing Commercial Products Or Commercial Services

Section 1824 amends 10 U.S.C.A. to add new § 3459, which provides that DOD “may not require that a clause be included in a” “commercial products or commercial services” “subcontract” “other than a clause that is on the [DFARS] lists required by” 10 U.S.C.A. § 3452 (as amended by § 1821) or is “otherwise applicable pursuant to” 10 U.S.C.A. § 3452(e). This section will apply only to “subcontracts entered into after the” publication in the DFARS of “the lists required by” 10 U.S.C.A. § 3452. “[O]therwise applicable pursuant to” 10 U.S.C.A. § 3452(e) refers to, for example, a “written determination” by the under secretary that “it would not be in the best interest of [DOD] to exempt subcontracts under a contract for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.” As to lists of inapplicable clauses, see 41 U.S.C.A. § 1906(c), FAR 12.504, and DFARS 512.504.

Section 1824(b) further provides that the secretary “may not require the application of any contract clauses to other supply agreements unless otherwise applicable pursuant to” 10 U.S.C.A. § 3452(e). Section 1824(c) states that “ ‘other supply agreement’ . . . ha[s] the meaning[] given” in 10 U.S.C.A. § 3452(c)(2), but no such definition exists. As amended by § 1821, 10 U.S.C.A. § 3452(c)(2)(B) provides that “subcontract” “does not include any agreement entered into by a

contractor or subcontractor for the supply of products or services that are intended for use in the performance of multiple contracts with [DOD] or with other parties, and that are not identifiable to any particular contract.”

Section 1825, Consumption-Based Solutions

Section 1825 creates new 10 U.S.C.A. § 3605, authorizing DOD and the military departments to acquire services delivered as “consumption-based solutions.” A “consumption-based solution” is “a model under which a service is provided to [DOD] and may utilize any combination of software, hardware or equipment, data, and labor or services that provides a capability that is metered and billed based on actual usage at fixed-price units.”

For such solutions, DOD must amend the DFARS to (1) “require[] the awardee to notify the . . . contracting officer when consumption under the contract reaches 75% and 90% of the funded amount, respectively, of the contract”; and (2) treat contract modifications “to add new features or capabilities in an amount less than or equal to 25 percent” of the original contract value as a procurement “made using competitive procedures[.]” Funding appropriated for consumption-based solution acquisitions can be used for (a) research, development, test and evaluation; (b) procurement; (c) production; (d) modification; and (e) operation and maintenance. Such funding can also be used to “enter into incrementally funded contracts or other agreements, including advanced payments.” The authority to use consumption-based solutions can also be combined with other contract types.

Section 1826, Exemptions for Nontraditional Defense Contractors

Section 1826 seeks to expand the defense industrial base by eliminating certain requirements for nontraditional defense contractors. It provides that, for DOD “contracts, subcontracts, or agreements,” “products and services provided by nontraditional defense contractors . . . shall be exempt from” the following requirements: DFARS 252.242-7006 (Accounting System Administration); DFARS 252.234-7002 (Earned Value Management System); DFARS 252.215-7002 (Cost Estimating System Requirements); DFARS 252.242-7004 (Material Management & Accounting System); DFARS 252.245-7003 (Contractor Property Management System Administration); DFARS 252.244-7001 (Contractor Purchasing

System Administration); DFARS 252.242-7005 (Contractor Business Systems); DFARS 215.407 (Special Cost or Pricing Areas); 10 U.S.C.A. § 3702 (Truthful Cost and Pricing Act (commonly known as TINA)); and FAR Part 31 (Contract Cost Principles and Procedures).

Under 10 U.S.C.A. § 3014,³⁴ “nontraditional defense contractor” “means an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by” DOD, “any [DOD] contract or subcontract” “that is subject to full coverage under the [CAS].”³⁵ The term nontraditional defense contractor is not synonymous with small business—these terms are often separately defined (for example, in FY 2026 NDAA § 824, discussed above. Since small businesses are not subject to CAS coverage,³⁶ small businesses can reasonably maintain they are also exempt from the above-referenced DFARS provisions, TINA, and FAR Part 31. However, there are certain circumstances where a small business may not qualify as a nontraditional defense contractor, for example (1) a previously large business that now qualifies as small but performed a full CAS-covered contract within the last 12 months, or (2) a business that is currently small under one North American Industry Classification System code but large under another, and performed a full CAS-covered contract as a large business in the last 12 months.

Section 1826 raises important, but unanswered, questions. For example, how will cost-reimbursement contracts and subcontracts be administered when FAR Part 31 is inapplicable? Will incurred costs still have to be reasonable, allowable, and allocable? What will auditors rely on to audit cost-type contracts and subcontracts?

Section 1826 only applies to DOD contracts. As a result, nontraditional defense contractors with cost-reimbursement contracts awarded by civilian agencies will still be subject to FAR Part 31 cost principles and TINA for civilian contracts, which means that if the applicable threshold is met, that contractor will have to provide certified cost or pricing data if requested. It is unclear if § 1826’s exemptions apply to DOD orders under civilian agency (e.g., General Services Administration) multiple award contracts *or* civilian agency orders placed under DOD multiple award contracts.

DOD can waive or modify § 1826’s exemptions for “a product or service with a written determination approved

by the” head of the contracting activity (HCA). This authority “may only be delegated to a senior contracting official for the relevant contracting activity” or “more senior official.” Section 1826’s exemptions can also be partially “applied to a contract, subcontract, or other agreement” “upon a written determination approved by the” HCA with an explanation as to why partial application is in the” Government’s “best interest.” If a waiver is issued, the secretary must notify the congressional defense committees within 60 days. The notice must include “a discussion of efforts made to adapt the acquisition approach for the product or service . . . so that such waiver would not be necessary.”

Section 1827, Clarification Of Conditions For Payments For Commercial Products And Commercial Services

Section 1827 amends 10 U.S.C.A. § 3805 to clarify that payments for covered services acquired through a “commercially utilized acquisition strategy” are not considered advance payments under 10 U.S.C.A. § 3801 that would trigger 10 U.S.C.A. § 3803’s requirement to provide adequate security for advance payments (generally in the form of a lien in favor of the Government). Section 1827 defines “commercially utilized acquisition strategy” as the “acquisition of a service by the head of an agency under terms and conditions that—(A) are similar to the terms and conditions under which such service is available to the public; and (B) provide such service” “as a consumption-based solution . . . or under a technology subscription model or other model based on predetermined pricing for access to such service.” “[C]overed service” means a commercial service that includes access to or use of any combination of hardware, equipment, software, labor, or services, including access to commercial satellite data and associated services, that is integrated to provide a capability.”

Section 1828, Review Of Commercial Products And Commercial Services Acquisition Approach

Section 1828 requires the secretary to conduct a comprehensive review of DOD’s approach to acquiring commercial products and services. The review must assess (1) the policies, procedures, guidance, training curricula, and educational materials of DOD related to commercial acquisitions; and (2) comprehensively review the centralized capability for assisting DOD and the military

departments in making commercial product and service determinations, conducting market research, and performing price reasonableness analyses established under 10 U.S.C.A. § 3456.

In reviewing the centralized capability, § 1828 requires an assessment of (a) “[m]ethods to enhance the capability’s responsiveness to determination requests”; (b) approaches to increase the number of determinations by employing commercially-derived technologies/processes and emphasizing a broad application of the definitions for commercial product and commercial service; (c) the review and acceptance of contractors’ commercial pricing lists for use across separate offers; (d) the experience of the acquisition workforce in using private-sector contract negotiation approaches; and (e) opportunities to “partner with the Director of the Defense Innovation Unit to improve commercial market research support and apply alternative capability-based pricing methods” for price reasonableness evaluations.³⁷ The comprehensive review must also assess DOD’s audit and oversight policies for commercial acquisitions, factors that disincentivize the acquisition of commercial products or services, and the rulemaking process for regulations related to commercial acquisitions.

Not later than June 2026, the secretary must submit a report on the findings of the comprehensive review to the congressional defense committees. This report must present the actions taken by the secretary to address the issues identified, include a recommendation for the continuation, termination, or modification of the centralized capability, and include recommendations on actions Congress should take to better enable DOD to utilize and benefit from commercial acquisitions.

Section 1832, Modifications To Requirements For Modular Open System Approach

Section 1832 amends 10 U.S.C.A. §§ 4402 and 4403 to align their requirements with 10 U.S.C.A. § 4401(a) and replaces the requirement that modular open system approaches for major weapons systems “ensure that major system interfaces incorporate commercial standards and other widely supported consensus-based standards that are validated, published, and maintained by recognized standards organizations to the maximum extent practicable” with a requirement that modular open system approaches “are adequately designated and defined to

achieve a modular open system approach and are delivered with supporting documentation necessary to enable the integration of components or modules provided by a third party into the modular system.” The JES provides that this change is intended to “streamline and simplify” modular open system approaches for major weapons systems.³⁸

Section 1833, Bridging Operational Objectives And Support For Transition (BOOST) Program

Section 1833 directs the Defense Innovation Unit (DIU) director to establish the “BOOST” program to accelerate the adoption or integration of commercial technologies into programs of record or fielded capabilities. Not later than March 2026, DOD must issue guidance that allows portfolio acquisition executives, program managers, and product support managers to request DIU’s assistance in identifying, adopting, or integrating viable commercial technologies. The guidance must also require the DIU director to (1) “review commercial technologies in response to each request and identify viable commercial technologies to address the issue presented by such request”; and (2) “upon request, execute coordinated development, experimentation, or integration of identified commercial technologies” to enable their adoption or integration into programs of record or fielded capabilities.

The director must ensure that the BOOST program works in coordination with other DOD authorities, programs, and activities responsible for adopting or integrating commercial technologies, including the Defense Research and Development Rapid Innovation Program, the Small Business Innovation Research Program, the Small Business Technology Transfer Program, and the “urgent acquisition of items” under 10 U.S.C.A. § 3601.

Not later December 2028, the secretary must submit a report to the congressional defense committees that assesses the effectiveness of the BOOST program in “accelerating the adoption or integration of commercial technologies into programs of record or fielded capabilities[.]” The report must include a summary of the persons assisted and the commercial technologies integrated, recommendations to improve the program, and a recommendation to terminate or continue the program. The BOOST program will expire on December 31, 2030.

Section 1841, Civil Reserve Manufacturing Network

Section 1841 requires the secretary to “direct the collaborative forum described in” FY 2026 NDAA § 1844(a) to “support the establishment of the Civil Reserve Manufacturing Network” (CRMN) “in collaboration with relevant government, industry, and academic entities.” The CRMN will be a “network of manufacturers partnering with the Secretary to rapidly convert commercial manufacturing capabilities or facilities from commercial manufacturing or production to [DOD]-directed manufacturing or production.” By March 2026, the collaborative forum must “identify laws, regulations, and policies impeding the establishment of the CRMN” and “develop recommendations for the establishment and the operation of the CRMN.” The recommendations for establishment and operation must include (1) “incentives for manufacturers to participate in the CRMN”; (2) “incentives or other considerations to address the risk of loss of manufacturing” to CRMN participants’ commercial customers; (3) production of a “National Manufacturing Registry” “to inventory the manufacturing capabilities” of the United States; and (4) creation of a “Materiel Compatibility Index” “to identify where existing equipment, capabilities, and skills of commercial manufacturing could be converted to support” DOD requirements. The secretary must submit a plan for establishing the CRMN to the congressional defense committees by June 2026. The plan must address (a) “a strategy to leverage government-owned manufacturing capabilities in partnership with the CRMN to support” DOD requirements; (b) a plan “to develop a network of commercial manufacturing capabilities and facilities that can rapidly” be converted to support DOD requirements; (c) an “assessment of existing public-private partnership authorities suitable for use by” CRMN participants “to broaden domestic manufacturing” capabilities and capacity, “along with recommendations to expand such authorities to enable the integration of commercial advanced manufacturing systems, materials, and practices with organic industrial base requirements”; (d) a list of existing centers of Industrial and Technical Excellence (designated under 10 U.S.C.A. § 2474); and (e) the criteria for activating the CRMN and a recommendation for the official(s) at DOD who should be authorized to do so. The plan should incorporate the collaborative forum’s recommendations to the extent practicable.

Upon the submission of the plan, the secretary must establish a program under which the secretary will manage and operate the CRMN and initiate its establishment. By June 2027, the secretary must “seek to enter into agreements with not fewer than two manufacturers, including advanced manufacturers, to participate in the CRMN.” Participants in the CRMN must enter into agreements to rapidly convert production facilities to DOD-directed manufacturing or production upon activation of the CRMN. Participants in the CRMN are eligible for (1) expedited qualification, certification, and testing procedures under FY 2025 NDAA, Pub. L. No. 118-159, § 865; and (2) subject to appropriations, awards for costs associated with—(a) expedited qualification and testing using an “advanced manufacturing crisis qualification framework,” which is a process that must be established “to streamline and expedite the qualification of advanced manufacturing sources, processes, or products prior to or during wartime or upon activation of the” CRMN; and (b) non-recurring engineering activities required to convert traditional specifications for advanced manufacturing use. The secretary must “encourage participants to prioritize converting existing commercial or dual-use manufacturing capabilities or facilities” rather than constructing new facilities. “None of the funds made available to a participant under the program . . . may be used for planning, design, or construction of a new advanced manufacturing facility.” Participants must certify at the time an agreement is awarded under this authority and annually thereafter that award funds have not been used for prohibited purposes.

Section 1841 defines “advanced manufacturing” as “manufacturing through the use of interconnected, advanced technologies throughout the design and manufacturing process that enables modular, adaptable, and efficient manufacturing, including software-controlled subtractive manufacturing, additive manufacturing, powder bed fusion manufacturing, and other similar manufacturing techniques.”

By June 2027, the secretary must report to the congressional defense committees on the progress of establishing the CRMN, including a strategy for transitioning “castings or forgings capabilities used to meet” DOD needs “that are experiencing delays or cost overruns to advanced manufacturing under the CRMN.”

Section 1842, Transition To Advanced Manufacturing For Certain Critical Readiness Items Of Supply

Under § 1842, by April 2026, the product support manager for each covered system must (1) “conduct an assessment of the critical readiness of items of supply that could be produced by advanced manufacturing within the 24-month period following” the FY 2026 NDAA’s December 2025 enactment; (2) “identify any research, development, engineering, or testing conducted by the original equipment manufacturer, a contractor, or the Federal Government required to transition production of such items of supply to production by advanced manufacturing”; and (3) “submit to the appropriate program manager and portfolio acquisition executive a plan to transition production” to advanced manufacturing “to the maximum extent practicable, along with an estimate of non-recurring costs to complete such transition and a recommendation whether such costs should be paid by the appropriate contractor or the Federal Government.” The purpose of the assessment in (1) above is to (a) increase the amount of critical readiness items of supply to meet readiness rates, (b) reduce manufacturing time or costs of such items, and (c) increase the ability to scale production of such items rapidly. “Covered system” and “critical readiness items of supply” are defined in § 1803, discussed above. “Advanced manufacturing” is defined in § 1841. The product support manager must initiate and coordinate qualification and acceptance of parts produced using advanced manufacturing under the expedited qualification process established in § 865 of the FY 2025 NDAA, Pub. L. No. 118-159.

Section 1843, Working Group On The Advanced Manufacturing Workforce

Section 1843 requires that, not later than June 2026, the secretary must establish a working group to identify opportunities to address workforce shortages in advanced manufacturing career fields. The working group will consist of members of the DOD Joint Additive Manufacturing Working Group and the collaborative forum established in § 1844 (discussed below). The working group is tasked with (1) identifying “estimated workforce shortages in advanced manufacturing career fields in the defense industrial base,” (2) identifying “career fields in advanced manufacturing and the associated skills and

abilities” required, and (3) developing recommendations addressing workforce development. By December 2026, the secretary must submit a report to Congress with a summary of the working group’s recommendations, actions taken by the secretary to implement the recommendations and to provide workforce training, and a recommendation on whether to terminate or continue the working group.

Section 1844, Collaborative Forum To Address Challenges To And Limitations Of The Defense Industrial Base

Under § 1844, by April 2026, the secretary must “identify one or more consortia or other entity to serve as a collaborative forum for government, private sector, academia, and nonprofit entities with expertise in advanced manufacturing to address the challenges to and limitations of the defense industrial base.” Section 1844 requires establishment of a working group within the consortia that will focus on issues such as (1) eliminating barriers to a resilient and robust defense industrial base, (2) assessing supply chain fragility, (3) expanding domestic manufacturing and industrial capacity, and (4) developing and training a skilled workforce. The secretary must consider work product and recommendations from the working group in developing and updating DOD policies, regulations, instructions, and manuals. By March 1, 2026, and annually thereafter until March 1, 2029, the secretary must brief the congressional armed services committees on the formation of the work group, a summary of any work products and recommendations, and recommendations for congressional action.

Section 1845, Facility Clearance Acceleration For Members Of Defense Industrial Consortiums

Under § 1845, each entity that is a member of the collaborative forum established under § 1844 should be sponsored for a facility security clearance, provided access to sensitive compartmented information facilities and classified networks, and invited to in-person meetings, not less than quarterly, with relevant DOD personnel to discuss classified information. Not later than March 2026, the secretary must submit to the congressional defense committees a plan to increase the number of facility clearances to members of the consortium or companies awarded contracts under Executive Order 12968, “Access to Classified Information.” The plan must

include, at a minimum, (1) an assessment of any existing efforts to increase classified facilities and how such efforts may be accelerated; (2) target metrics for increased facility clearances in association with membership in the collaborative forum from § 1844; and (3) identification of any additional funding or authorities required to support increased processing of facility clearances.

Section 1846, Improvements Relating To Advanced Manufacturing

Section 1846 directs certain activities aimed at increased advanced manufacturing capabilities, including (1) leadership changes, (2) policy and guidance reviews, and (3) development of new guidance. The under secretaries for acquisition and sustainment and for research and engineering will be appointed the co-chairs of the Joint Defense Manufacturing Technology Panel, the Joint Additive Manufacturing Working Group, and the Consortium on Additive Manufacturing for Defense Capability Development. By September 30, 2026, the under secretaries, in consultation with the military department secretaries, must review the policies and procedures for the qualification, acceptance, and management of the supply chains of products that are not manufactured using advanced manufacturing, identify any changes to those policies to ensure DOD can benefit fully from advanced manufacturing, and make any corresponding updates to the policies. By September 30, 2027, the under secretaries, in consultation with the military department secretaries, must issue guidance on the use of advanced manufacturing capabilities to improve DOD's ability to execute missions. Such guidance should include, at a minimum, (a) "a methodology for qualifying advanced manufacturing processes"; (b) "a methodology for standardizing technical production specifications, testing processes, and data reciprocity to share and accept test results of the same parts produced using advanced manufacturing across military departments"; (c) test and evaluation procedures that use the expedited qualification and testing procedures established in FY 2025 NDAA, Pub. L. No. 118-159, § 865; (d) "a methodology for streamlined qualification and acceptance of contractor-provided parts where the contractor uses advanced manufacturing processes to produce such parts"; (e) processes for management of DOD supply chains that use similar or identical parts made using different manufacturing techniques; (f) "processes to allow for streamlined

incremental qualification of an advanced manufacturing process"; and (g) "processes to explore the option for external certification of entities using advanced manufacturing processes[.]" "Advanced manufacturing" is defined in § 1841.

Section 1847, Report On Surge Capacity In The Defense Industrial Base

Section 1847 requires the assistant secretary of defense for industrial base policy and the director of defense pricing, contracting, and acquisition policy to jointly submit a report on the regulations or policies that disincentivize DOD contractors from maintaining or investing in surge capacity. "Surge capacity" is defined as the ability to rapidly increase production capacity to meet increased demand for defense articles and defense services. The report, which should address policies that incentivize contracts to reduce or eliminate surge capacity and any steps taken by the secretary to address barriers to surge capacity, must be submitted to the congressional defense committees not later than March 1, 2026. Section 1847 also requires the secretary to submit the report called for in § 859 of the FY 2023 NDAA, Pub. L. No. 117-263, which requires DOD to conduct a demonstration exercise of industrial mobilization and supply chain management planning capabilities in support of one or more operational or contingency plan use cases.

Non-Titles VIII And XVIII FY 2026 NDAA Provisions Important To Procurement Law

Section 230, Prohibition On Modification Of Indirect Cost Rates For Institutions Of Higher Education And Nonprofit Organizations

Section 230 provides that the secretary "may not change or modify indirect cost rates (otherwise known as facilities and administration cost rates)" for DOD "grants and contracts awarded to institutions of higher education and nonprofit organizations" until the secretary makes a certification to the congressional defense committees. The certification must confirm that DOD has "developed an alternative indirect cost model" in collaboration with the "extramural research community, including representatives from universities, university associations, independent research institutes, and private foundations," that

has “(A) reduced the indirect cost rate for all applicable institutions of higher education and nonprofit organizations” compared to rates for FY 2025, and “(B) optimized payment of legitimate and essential indirect costs involved in conducting [DOD] research to ensure transparency and efficiency for [DOD]-funded grants and contracts[.]” The certification must also confirm that DOD has “established an implementation plan with adequate transition time to change budgeting and accounting processes for affected institutions of higher education and nonprofit organizations.”

This provision stems from the administration’s efforts during 2025 to cap indirect cost rates for federal grants at no more than the Uniform Guidance’s current de minimis indirect cost rate of 15%, particularly for institutions of higher education. These efforts came in the form of new policies attempting to cap indirect cost rates issued by the National Institutes of Health, National Science Foundation, DOD, and the Department of Energy (which also sought to cap indirect cost rates for state and local governments at 10%). These policies were successfully challenged in court by states and associations representing institutions of higher education.³⁹ In August 2025, the President signed Executive Order 14332 (“Improving Oversight of Federal Grantmaking”), which instructs OMB to “revise the Uniform Guidance and other relevant guidance to appropriately limit the use of discretionary grant funds” for indirect costs.⁴⁰

Although § 230 only impacts DOD, it sends a broader message that, while Congress may support reducing indirect cost rates going forward, it wants any such changes to reflect a more transparent and predictable process that ensures (1) recipients have input into any changes to indirect cost rate models, (2) specific recipients and types of recipients are not singled out for certain treatment, (3) DOD research is not compromised through failure to pay “legitimate and essential” indirect costs, and (4) organizations have adequate time to implement any new model that is developed.

Section 1085, AUKUS Improvement Act Of 2025

Section 1085 amends the Arms Export Control Act (22 U.S.C.A. § 2778(1)) by allowing defense articles sold under the Act to be “reexported, retransferred or temporarily imported” between the governments of Australia, the United Kingdom, or entities eligible under 22 C.F.R.

§ 126.7(b)(2) (exemptions for defense trade among Australia, the United Kingdom, and the United States), notwithstanding the presidential consent requirement in § 3(a)(2) of the Act or § 505(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C.A. § 2314).

Section 1623, Codification Of DOD Insider Threat Program

Section 1623 codifies DOD’s insider threat program from § 922(a) and (b) of the FY 2012 NDAA, Pub. L. No. 112-81, into a new section, 10 U.S.C.A. § 2225. The provision requires the secretary to establish a program for information sharing protection and insider threat mitigation for the information systems of DOD to detect unauthorized access to, use of, or transmission of classified or controlled unclassified information. The JES notes that the program must achieve initial operating capability by October 1, 2027, and full operating capability by October 1, 2028. The JES also directs the secretary to submit to the congressional defense committees a plan for increasing the use of user activity monitoring capabilities on DOD unclassified networks and systems not later than June 1, 2026.⁴¹

Section 1626, Review And Evaluation Of Extension Or Inactive Security Clearances

Section 1626 requires the under secretary of defense for intelligence and security, in coordination with the director of national intelligence, to conduct a review and evaluation of the feasibility and advisability of extending the period of inactive security clearances for covered individuals for not more than five years. At a minimum, the review should assess the feasibility and advisability of subjecting inactive security clearances to continuous vetting and due diligence. Not later than June 30, 2026, the under secretary shall provide the House and Senate armed services committees and the congressional intelligence committees a briefing on the results of the review and evaluation.

The House version of the NDAA (H.R. 3838) contained a provision, § 1615, that would have authorized an entity that enters into a covered contract or agreement with a DOD component to designate additional covered persons who may require a security clearance in specified circumstances. This provision would have authorized DOD to collect fees for investigating, adjudicating, and

maintaining those additional clearances. The JES explains that Congress was concerned with the delays in the issuance of regulations and policies to further expand security clearance access. Although the provision was not adopted, the JES directed the secretary, in consultation with the director of national intelligence, to provide a briefing to the congressional armed services committees by March 31, 2026, on the status of regulations and policies to support additional security clearances for personnel supporting covered contracts.⁴²

Title LXXXV, Comprehensive Outbound Investment National Security (COINS) Act Of 2025 (FY 2026 NDAA §§ 8501–8531)

Title LXXXV is an extensive and detailed title that amends the Defense Production Act (10 U.S.C.A. § 4502 et seq.) and authorizes the President to use the International Emergency Economic Powers Act (50 U.S.C.A. § 1701 et seq.) to “prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of” or an entity under the control of (1) an entity incorporated in or whose principal place of business is in China, (2) a member of the Chinese Communist Party, (3) a Chinese government entity, or (4) an entity significantly engaged in Chinese defense or related sectors. The COINS Act codifies and expands the existing Outbound Investment Rule (31 C.F.R. pt. 850) that became effective in January 2025, and prohibits, or requires notification for, certain transactions undertaken directly or indirectly by U.S. persons with Chinese or Chinese-owned entities. Like the Outbound Investment Rule, the COINS Act applies to “covered national security transactions” undertaken by U.S. persons with “covered foreign persons” engaged in certain activities relating to semiconductor, quantum information, hypersonic systems, high-performance computing and supercomputing, and artificial intelligence sectors. “Covered foreign persons” include members of the political leadership of a country of concern and any foreign person subject to the direction or control of a country or concern (including subdivisions); an entity that is incorporated, has a principal place of business in, or is organized under the laws of a country of concern; or a member of the Central Committee of the Chinese Communist Party or the political leadership of a country of concern. Countries of concern are expanded beyond the Outbound Investment Rule’s focus on China to include Russia, North Ko-

rea, Cuba, Iran, and Venezuela. Covered national security transactions include (1) direct or indirect acquisitions of equity, (2) providing loans or similar debt financing, (3) “acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern” if it will result or is intended to result in establishment of a covered foreign person or “engagement of a person of a country of concern in a prohibited technology or notifiable technology,” (4) joint ventures, and (5) certain limited partner investments that involve covered foreign persons that engage in specified activities in the identified sectors. The secretary may identify other types of covered national security transactions in consultation with the appropriate congressional committees, subject to a notice and comment rulemaking process. Intelligence and other specific activities are exempt from the prohibition, as are certain secondary/ancillary transactions, de minimis transactions, and “ordinary or administrative business transactions.”

Section 221, Review And Alignment Of Standards, Guidance, And Policies Relating To Digital Engineering

In addition to the provisions in Title XVIII discussed above, Title II contains a number of provisions on advanced manufacturing. Section 221 requires the military departments, not later than June 2026, to complete a review of the “standards, guidance, and policies” and within 180 days after completing the review, to implement a “standard reference architecture” to guide digital engineering for “program design, development, and testing.” The reference architectures must get approval from the under secretary for acquisition and sustainment, and must be reviewed at least once every three years, through September 2034.

Section 225, Advanced Robotic Automation For Munition Manufacturing

Section 225 requires the Army to establish a program supporting robotic automation for munition manufacturing at Government-owned, contractor-operated facilities. By March 1, 2026, the Army must brief the defense committees on the progress of the program and include in the briefing “recommendations for the wider adoption of robotic automation technologies within the defense industrial base.”

FY 2026 NDAA AI- And Cybersecurity-Related Provisions Of Interest To The Procurement Community

Section 228, Demonstration Of Near Real-Time Monitoring Capabilities To Enhance Weapon System Platforms

Section 228 requires DOD, subject to available appropriations, to demonstrate on select weapon systems “onboard, near real-time, end-to-end . . . monitoring capabilities to detect cyber threats and improve maintenance efficiency.” If appropriations are available, this section requires DOD to assess the feasibility and advisability of establishing a program for implementing real-time monitoring for self-protection capabilities across DOD weapon system platforms. Not later than March 2026, the secretary must select at least three weapon systems (prioritizing the MH-60R and MQ-9). Not later than December 2026, DOD must extend monitoring capabilities to the complete fleets of selected platforms and remediate those weapon system platforms that do not meet cybersecurity requirements through automated, real-time monitoring. By January 1, 2027, DOD must submit to the defense committees a report on the effort and its efficacy.

Section 1513, Physical And Cybersecurity Procurement Requirements For AI Systems

Section 1513 requires DOD, in coordination with industry and academia, to develop a framework for implementing “cybersecurity and physical security standards and best practices” for AI and machine learning technologies, to include insider threat, workforce training, supply chain risks, and commercially available systems for continuous monitoring and assessment. The section also requires DOD, not later than June 2026, to submit to the congressional defense committees an update on the framework.

Section 347, Integration Of Commercially Available AI Capabilities Into Logistics Operations

Section 347 requires DOD to integrate commercially available AI that can be used for logistics tracking, planning, operations, and analytics into two exercises to be conducted during FY 2026. Within 30 days of the exer-

cises’ completion, the combatant commander responsible for the exercises must brief the congressional defense committees on the results.

Section 350, Pilot Program For Data-Enabled Ground Vehicle Maintenance

This section requires the Army, Navy, and Air Force, within 90 days of enactment and in consultation with DOD Chief Digital and Artificial Intelligence Officer, to establish pilot programs to use commercially available AI to improve the maintenance of ground vehicles. Each armed force, within one year of enactment, must submit a report on the pilot to the committees. The authority for the pilot sunsets January 1, 2029.

Section 1512, AI And Machine Learning Security In DOD

Section 1512 requires DOD, not later than June 2026, to implement a DOD-wide policy for the cybersecurity and governance of AI and machine learning systems, to include protecting against security threats specific to AI and machine learning, and cybersecurity measures throughout the life cycle of systems using AI or machine learning. DOD is further required to review the effectiveness of AI and machine learning cybersecurity and governance practice within DOD and report to the congressional armed services committees by August 31, 2026, on the findings of the review. The JES states: “Any policy . . . relating to the use, submission, or maintenance of a software bill of materials should also apply” to AI.⁴³

Section 1532, Guidance And Prohibition On Use Of Certain AI

Section 1532 requires DOD, by January 17, 2026, to exclude and remove from all DOD systems and devices, AI systems developed by the Chinese company DeepSeek or High Flyer (or an entity owned, funded, or supported by High Flyer). This section also requires DOD to consider issuing guidance to exclude or remove AI systems developed by entities in, or controlled/influenced by China, Russia, North Korea, and Iran when such systems pose a national security risk; or are on the Commerce Department Consolidated Screening List, “civil-military fusion list maintained under” FY 2021 NDAA, Pub. L. No. 116-283, § 1260H, or identified by the

National Industrial Security Program. Section 1532 further requires DOD, by January 17, 2026, to apply the same exclusions and guidance to contractors using such AI systems in performance of a DOD contract. Section 1532 permits waivers, on a case-by-case basis, to fulfill mission-critical functions or other specified activities.

Peering Ahead To The FY 2027 NDAA

Given the extensive changes made in this year's NDAA, the FY 2027 NDAA is generally expected to have comparatively fewer acquisition-related provisions. But acquisition will still be an active area for legislation. Areas ripe for consideration will be rationalizing and harmonizing the plethora of disparate restrictions on procurements from China, Iran, North Korea, and Russia that have been enacted in recent years, further efforts to expand the defense industrial base, and when necessary, clarifying and tweaking provisions included in the FY 2026 NDAA. Some of the provisions that were dropped may also be considered for inclusion in the FY 2027 NDAA, such as increasing additional acquisition thresholds or further streamlining CAS.

ENDNOTES:

¹See Cong. Rsch. Serv., IN12653, FY2026 NDAA: Status of Legislative Activity 2, 3 (Feb. 10, 2026), <https://www.congress.gov/crs-product/IN12653>.

²Cong. Rsch. Serv., R46714, FY2021 National Defense Authorization Act: Context and Selected Issues for Congress, Summary, 2 (Mar. 28, 2021), <https://www.congress.gov/crs-product/R46714>; see Cong. Rsch. Serv., IF10516, Defense Primer: Navigating the NDAA 1 (Dec. 4, 2025), <https://www.congress.gov/crs-product/IF10516>.

³See Cong. Rsch. Serv., IN12653, FY2026 NDAA: Status of Legislative Activity 2 (Feb. 10, 2026), <https://www.congress.gov/crs-product/IN12653>.

⁴See Cong. Rsch. Serv., IN12225, FY2024 NDAA: Department of Defense Acquisition Policy 1 (Aug. 17, 2023), <https://www.congress.gov/crs-product/IN12225>.

⁵See Cong. Rsch. Serv., IN12225, FY2024 NDAA: Department of Defense Acquisition Policy 1 (Aug. 17, 2023), <https://www.congress.gov/crs-product/IN12225> (“Congress may incorporate provisions related to the defense acquisition process or individual acquisition programs in multiple titles in an NDAA.”).

⁶See Presidential Signing Statement on the FY 2026 NDAA (Dec. 18, 2025), <https://www.whitehouse.gov/briefings-statements/2025/12/statement-by-the-president-7598/>.

⁷See Presidential Signing Statement on the FY 2026 NDAA (Dec. 18, 2025), <https://www.whitehouse.gov/briefings-statements/2025/12/statement-by-the-president-7598/>.

⁸Joint Explanatory Statement To Accompany the National Defense Authorization Act for Fiscal Year 2026, <https://rules.house.gov/sites/evo-subsites/rules.house.gov/files/documents/fy26-ndaa-joint-explanatory-statement-final.pdf> [hereinafter JES].

⁹Cong. Rsch. Serv., IF10516, Defense Primer: Navigating the NDAA 2 (Dec. 4, 2025), <https://www.congress.gov/crs-product/IF10516>; Cong. Rsch. Serv., Rept. No. 98-382, Conference Reports and Joint Explanatory Statements 1-2 (June 11, 2015), <https://www.congress.gov/crs-product/98-382>.

¹⁰Cong. Rsch. Serv., IN12653, FY2026 NDAA: Status of Legislative Activity 2 (Feb. 10, 2026), <https://www.congress.gov/crs-product/IN12653>.

¹¹See also Cong. Rsch. Serv., IN12653, FY2026 NDAA: Status of Legislative Activity 2 (Feb. 10, 2026), <https://www.congress.gov/crs-product/IN12653>. For an outstanding analysis of the FY 2026 NDAA, see Yukins, “National Defense Authorization Act (NDAA) for Fiscal Year 2026—Summary of Acquisition Reforms,” Public Procurement International (Jan. 15, 2026), <https://publicprocurementinternational.com/national-defense-authorization-act-ndaa-for-fiscal-year-2026-summary-of-acquisition-reforms/>.

¹²JES at 160.

¹³JES at 160.

¹⁴JES at 161.

¹⁵See Schaengold, Prusock & Muenzfeld, “Feature Comment: The Impact of the FY 2019 NDAA on Federal Procurement Law—Part II,” 60 GC ¶ 340 (Nov. 7, 2018).

¹⁶JES at 164.

¹⁷See FAR 2.101 (SAT definition).

¹⁸See, e.g., Prusock, Schwartz, Ross & Schaengold, “Feature Comment: The FY 2023 National Defense Authorization Act’s Impact on Federal Procurement Law—Part I,” 65 GC ¶ 7 (Jan. 18, 2023) (discussion of Pub. L. No. 117-263 § 811, Inclusion in Budget Justification Materials of Enhanced Reporting on Proposed Cancellations and Modifications to Multiyear Contracts).

¹⁹JES at 176.

²⁰See, e.g., Prusock, Schwartz, Ross, Malone & Schaengold, “A Comprehensive Analysis of the Fiscal Year 2025 National Defense Authorization Act’s Impact on Federal Procurement Law,” 25-4 Briefing Papers 1 (Mar. 2025) (discussion accompanying § 885); GAO Bid Protest Annual Report to Congress for Fiscal Year 2025, B-158766 (Dec. 12, 2025), <https://www.gao.gov/assets/890/882727.pdf>; RAND Corp., Assessing Bid Protests of U.S. Department of Defense Procurements: Identifying Issues, Trends, and Drivers at xv (2018), <https://www.rand.org/pubs/other/2018/01/assessing-bid-protests-of-us-department-of-defense-procurements-identifying-issues-trends-and-drivers-at-xv-2018/>.

[d.org/content/dam/rand/pubs/research_reports/RR2300/RR2356/RAND_RR2356.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2356/RAND_RR2356.pdf) (concluding that protests by incumbent DOD contractors, particularly of follow-on awards of task orders, had higher than average—approximately 70%—effectiveness rates).

²¹See *Ramcor Servs. Group, Inc. v. United States*, 185 F.3d 1286 (Fed. Cir. 1999), 41 GC ¶ 361.

²²See FAR subpt. 1.5; FAR 1.301(b).

²³See 50 U.S.C.A. § 1431 et seq.

²⁴Compare FAR 2.101 (2024) (“Best value means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.”).

²⁵JES at 379.

²⁶JES at 379.

²⁷See 10 U.S.C.A. § 3041.

²⁸See 10 U.S.C.A. § 4201.

²⁹See 48 C.F.R. § 9903.201-2, “Types of CAS coverage.”

³⁰See 48 C.F.R. § 9903.201-1(b)(7).

³¹JES at 381.

³²See Prusock, Schwartz, Ross & Schaengold, “Feature Comment: The FY 2023 National Defense Authorization Act’s Impact on Federal Procurement Law—Part II,” 65 GC ¶ 12 (Jan. 25, 2023).

³³See Prusock, Schwartz, Ross & Schaengold, “Feature Comment: The Significance of the FY 2024 NDAA to Federal Procurement Law—Part I,” 66 GC ¶ 8 (Jan. 17, 2024).

³⁴See DFARS 202.101 (nontraditional contractor definition).

³⁵See 41 U.S.C.A. § 1502(b); 48 C.F.R. § 9903.201-2(a); see also DFARS 252.215-7013.

³⁶See 48 C.F.R. § 9903.201-1(b)(3).

³⁷See, e.g., Prusock, Schwartz, Ross, Malone & Schaengold, “A Comprehensive Analysis of the Fiscal Year 2025 National Defense Authorization Act’s Impact on Federal Procurement Law,” 25-4 Briefing Papers 1 (Mar. 2025) (discussion of the pilot program under FY 2025 NDAA, Pub. L. No. 118-159, § 864 that gave DOD contracting officers the option of using alternative capability-based analysis to determine price reasonableness for commercial products and services offered by nontraditional defense contractors).

³⁸JES at 386.

³⁹See, e.g., *Ass’n of Am. Univs. v. Dep’t of Def.*, 806 F. Supp. 3d 79 (D. Mass. 2025); *Massachusetts v. Nat’l Insts. of Health*, 164 F.4th 1 (1st Cir. 2026); see also Cong. Rsch. Serv., *In Focus*, IF13131, NIH Grants Policy Under the Second Trump Administration (Dec. 11, 2025), <https://www.congress.gov/crs-product/IF13131>; Cong. Rsch. Serv., *Insight*, IN12516, NIH Indirect Costs Policy for Research Grants: Recent Developments (Dec. 9, 2025), <https://www.congress.gov/crs-product/IN12516>.

⁴⁰See Cong. Rsch. Serv. Report, R42769, *Federal Grants-in-Aid Administration: A Primer* 17 & n.17 (Mar. 5, 2026), <https://www.congress.gov/crs-product/R42769>.

⁴¹JES at 342-43.

⁴²JES at 362.

⁴³JES at 313.

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