

“(e) EFFECTIVE DATE.—This section shall take effect on July 1, 2022.”

PROHIBITION ON PROCUREMENTS FROM CHINESE
MILITARY COMPANIES

Pub. L. 109–163, div. A, title XII, §1211, Jan. 6, 2006, 119 Stat. 3461, as amended by Pub. L. 112–81, div. A, title XII, §1243(a), (b), Dec. 31, 2011, 125 Stat. 1645; Pub. L. 114–328, div. A, title XII, §1296, Dec. 23, 2016, 130 Stat. 2562; Pub. L. 117–263, div. A, title VIII, §857(b), Dec. 23, 2022, 136 Stat. 2729, provided that:

“(a) PROHIBITION.—The Secretary of Defense may not procure goods or services described in subsection (b), through a contract or any subcontract (at any tier) under a contract, from any Communist Chinese military company, any Chinese military company, any Non-SDN Chinese military-industrial complex company, or any other covered company.

“(b) GOODS AND SERVICES COVERED.—

“(1) IN GENERAL.—For purposes of subsection (a), and except as provided in paragraph (2), the goods and services described in this subsection are goods and services—

“(A) on the munitions list of the International Traffic in Arms Regulations; or

“(B) on the Commerce Control List that—

“(i) are classified in the 600 series; or

“(ii) contain strategic and critical materials, rare earth elements, or energetic materials used to manufacture missiles or munitions.

“(2) EXCEPTIONS.—Goods and services described in this subsection do not include goods or services procured—

“(A) in connection with a visit by a vessel or an aircraft of the United States Armed Forces to the People’s Republic of China;

“(B) for testing purposes; or

“(C) for purposes of gathering intelligence.

“(c) WAIVER AUTHORIZED.—The Secretary of Defense may waive the prohibition in subsection (a) if the Secretary determines that such a waiver is necessary for national security purposes and the Secretary submits to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report described in subsection (d) not less than 15 days before issuing the waiver under this subsection.

“(d) REPORT.—The report referred to in subsection (c) is a report that identifies the specific reasons for the waiver issued under subsection (c) and includes recommendations as to what actions may be taken to develop alternative sourcing capabilities in the future.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘Chinese military company’ has the meaning given that term by section 1260H(d)(1) [now 1260H(g)(1)] of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 10 U.S.C. 113 note).

“(2) The term ‘Commerce Control List’ means the list maintained by the Bureau of Industry and Security and set forth in Supplement No. 1 to part 774 of the Export Administration Regulations.

“(3) The term ‘Communist Chinese military company’ has the meaning provided that term by section 1237(b)(4) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [Pub. L. 105–261] (50 U.S.C. 1701 note).

“(4) The term ‘Export Administration Regulations’ has the meaning given that term in section 1742 of the Export Control Reform Act of 2018 (50 U.S.C. 4801).

“(5) The term ‘munitions list of the International Traffic in Arms Regulations’ means the United States Munitions List contained in part 121 of subchapter M of title 22 of the Code of Federal Regulations.

“(6) The term ‘Non-SDN Chinese military-industrial complex company’ means any entity on the Non-SDN Chinese Military-Industrial Complex Companies List—

“(A) established pursuant to Executive Order 13959 (50 U.S.C. 1701 note; relating to addressing the

threat from securities investments that finance Communist Chinese military companies), as amended before, on, or after the date of the enactment of the [James M. Inhofe] National Defense Authorization Act for Fiscal Year 2023 [Dec. 23, 2022]; and

“(B) maintained by the Office of Foreign Assets Control of the Department of the Treasury.

“(7) The term ‘other covered company’ means a company that—

“(A) is owned or controlled by the government of the People’s Republic of China; and

“(B) is certified by the Secretary of Defense to the congressional defense committees to be a company that must be covered by this section for national security reasons.

“(8) The term ‘strategic and critical materials’ means materials designated as strategic and critical under section 3(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b(a)).

“(f) EFFECTIVE DATE.—With respect to goods and services described in clause (i) of subparagraph (b)(1)(B), the prohibition shall take effect 180 days after the date on which the Secretary of Defense certifies to the congressional defense committees that a sufficient number of commercially viable providers exist outside of the People’s Republic of China that collectively can provide the Department of Defense with satisfactory quality and sufficient quantity of such goods or services as and when needed at United States market prices.”

[Pub. L. 112–81, div. A, title XII, §1243(c), Dec. 31, 2011, 125 Stat. 1646, provided that: “The amendments made by this section [amending section 1211 of Pub. L. 109–163, set out above] take effect on the date of the enactment of this Act [Dec. 31, 2011] and apply with respect to contracts and subcontracts of the Department of Defense entered into on or after the date of the enactment of this Act.”]

§ 4651. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520, §2207; amended Pub. L. 104–106,

div. A, title VIII, § 801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111-350, § 5(b)(5), Jan. 4, 2011, 124 Stat. 3842; renumbered § 4651, Pub. L. 116-283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2207	5:174d.	June 30, 1954, ch. 432, § 719, 68 Stat. 353.

The following substitutions are made: “spent” for “expended”; “United States” for “Government”; “if a contract is terminated under clause (1)” for “that in the event any such contract is so terminated”; and “has . . . that it would have had if” for “shall be entitled . . . to pursue . . . as it could pursue in the event of”. The word “official” is inserted for clarity. The words “entered into after June 30, 1954” are omitted as executed.

Editorial Notes

PRIOR PROVISIONS

A prior section 4651, Aug. 10, 1956, ch. 1041, 70A Stat. 260; Pub. L. 99-145, title XIII, § 1301(b)(3)(C), Nov. 8, 1985, 99 Stat. 736, related to issuance of arms, tentage, and equipment necessary for proper military training to institutions not maintaining units of the Reserve Officers’ Training Corps, prior to repeal by Pub. L. 112-239, div. A, title V, § 552(b), Jan. 2, 2013, 126 Stat. 1741.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2207 of this title as this section.

2011—Subsec. (b). Pub. L. 111-350 substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Pub. L. 104-106 designated existing provisions as subsec. (a) and added subsec. (b).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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

§ 4652. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103-355, title VII, § 7202(a)(1), Oct. 13, 1994, 108 Stat. 3379, § 2247; renumbered § 2249, Pub. L. 104-106, div. D, title XLIII, § 4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672; renumbered § 4652, Pub. L. 116-283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4652 was renumbered section 7652 of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2249 of this title as this section.

1996—Pub. L. 104-106 renumbered section 2247 of this title as section 2249.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355 set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

§ 4653. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97-86, title IX, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123, § 2392; renumbered § 4653, Pub. L. 116-283, div. A, title XVIII, § 1862(b), Jan. 1, 2021, 134 Stat. 4277.)

Editorial Notes

PRIOR PROVISIONS

A prior section 4653 was renumbered section 7653 of this title.

AMENDMENTS

2021—Pub. L. 116-283 renumbered section 2392 of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

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

§ 4654. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary’s knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and