

a project with respect to the requirements under subclauses (II) and (III) of section 9902(a)(2)(B)(ii) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652(a)(2)(B)(ii)(II) and (III));

“(2) ensure that each covered entity, as defined in section 9901 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), that is awarded financial assistance under section 9902 of that Act (15 U.S.C. 4652) is carrying out the commitments of the covered entity to economically disadvantaged individuals as described in the application of the covered entity under that section by the target dates for completion established by the Secretary of Commerce under subsection(a)(5)(A) of that section; and

“(3) increase participation of and outreach to economically disadvantaged individuals, minority-owned businesses, veteran-owned businesses, and women-owned businesses, as defined by the Secretary of Commerce, respectively, in the geographic area of a project under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) and serve as a resource for those individuals, businesses, and covered entities.

“(d) STAFF.—The activities under this section shall be staffed at the appropriate levels to carry out the functions and responsibilities under this section until 95 percent of the amounts of funds made available for the program established under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) have been expended.

“(e) REPORT.—Beginning on the date that is 1 year after the date on which the Secretary of Commerce establishes the activities described in subsection (c), the Secretary of Commerce shall submit to the appropriate committees of Congress, as defined in section 9901(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), and make publicly available on the website of the Department of Commerce an annual report regarding the actions taken by the Department of Commerce under this section.”

REFERENCES IN PUB. L. 117-167

Pub. L. 117-167, §2, Aug. 9, 2022, 136 Stat. 1371, provided that: “Except as expressly provided otherwise, any reference to ‘this Act’ contained in any division of this Act [see Tables for classification] shall be treated as referring only to the provisions of that division.”

Executive Documents

DELEGATION OF FUNCTIONS AND AUTHORITIES UNDER SECTION 9902(a)(3)(B) OF THE WILLIAM M. (MAC) THORNBERRY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021

Memorandum of President of the United States, July 19, 2024, 89 F.R. 59817, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Director of the Office of Management and Budget the functions and authorities vested in the President by section 9902(a)(3)(B) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283) [15 U.S.C. 4652(a)(3)(B)] with respect to the certification and reporting requirements regarding Federal investments in individual projects exceeding \$3 billion.

You are authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

§ 4653. Department of Defense

(a) Department of Defense efforts

(1) In general

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall establish a public-private partnership through which the Secretary shall work to incentivize the formation of one or more consortia of companies (or other such partnerships of private-sector entities, as appropriate) to ensure the development and production of measurably secure microelectronics, including integrated circuits, logic devices, memory, and the packaging and testing practices that support these microelectronic components by the Department of Defense, the intelligence community, critical infrastructure sectors, and other national security applications. Such incentives may include the use of grants under section 4652 of this title, and providing incentives for the creation, expansion, or modernization of one or more commercially competitive and sustainable microelectronics manufacturing or advanced research and development facilities in the United States.

(2) Risk mitigation requirements

A participant in a consortium formed with incentives under paragraph (1)—

(A) shall have the potential to enable design, perform fabrication, assembly, package, or test functions for microelectronics deemed critical to national security as defined by the National Security Advisor and the Secretary of Defense;

(B) may be a fabless company migrating its designs to the facility envisioned in paragraph (1) or migrating to an existing facility onshore;

(C) may be companies, including fabless companies and companies that procure large quantities of microelectronics, willing to co-invest to achieve the objectives set forth in paragraph (1);

(D) shall include management processes to identify and mitigate supply chain security risks; and

(E) shall be capable of providing microelectronic components that are consistent with applicable measurably secure supply chain and operational security standards established under section 224(b) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92).

(3) National security considerations

The Secretary of Defense and the Director of National Intelligence shall select participants for each consortium and or¹ partnership formed with incentives under paragraph (1). In selecting such participants, the Secretary and the Director may jointly consider whether the companies—

(A) have participated in previous programs and projects of the Department of Defense,

¹ So in original.

Department of Energy, or the intelligence community, including—

- (i) the Trusted Integrated Circuit program of the Intelligence Advanced Research Projects Activity;
- (ii) trusted and assured microelectronics projects, as administered by the Department of Defense;
- (iii) the Electronics Resurgence Initiative program of the Defense Advanced Research Projects Agency; or
- (iv) relevant semiconductor research programs of the Advanced Research Projects Agency–Energy;

(B) have demonstrated an ongoing commitment to performing contracts for the Department of Defense and the intelligence community;

(C) are approved by the Defense Counterintelligence and Security Agency or the Office of the Director of National Intelligence as presenting an acceptable security risk, taking into account supply chain assurance vulnerabilities, counterintelligence risks, and any risks presented by companies whose beneficial owners are located outside the United States; and

(D) are evaluated periodically for foreign ownership, control, or influence by a foreign entity of concern.

(4) Nontraditional defense contractors and commercial entities

Arrangements entered into to carry out paragraph (1) shall be in such form as the Secretary of Defense determines appropriate to encourage industry participation of nontraditional defense contractors or commercial entities and may include a contract, a grant, a cooperative agreement, a commercial agreement, the use of other transaction authority under section 2371² of title 10 or another such arrangement.

(5) Implementation

Subject to the availability of appropriations for such purposes, the Secretary of Defense—

(A) shall carry out paragraph (1) jointly through the Office of the Under Secretary of Defense for Research and Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment; and

(B) may carry out paragraph (1) in collaboration with any such other component of the Department of Defense as the Secretary of Defense considers appropriate.

(6) Other initiatives

(A) Required initiatives

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the National Nuclear Security Administration, as appropriate, may dedicate initiatives within the Department of Defense to carry out activities to advance radio frequency, mixed signal, radiation tolerant, and radiation hardened microelectronics that support national security and dual-use applications.

(B) Support plan required

The Secretary of Defense, in consultation with the heads of appropriate departments and agencies of the Federal Government, shall develop a plan, including assessment of resource requirements and designation of responsible officials, for the maintenance of capabilities to produce trusted and assured microelectronics to support current and legacy defense systems, other government systems essential for national security, and critical infrastructure of the United States, especially for items with otherwise limited commercial demand.

(C) Assessment of public private partnerships and activities

In conjunction with the activities carried out under this section, the Secretary of Defense shall enter into an agreement with the National Academies of Science, Engineering, and Medicine to undertake a study to make recommendations and provide policy options for optimal public-private partnerships and partnership activities, including an analysis of establishing a semiconductor manufacturing corporation to leverage private sector technical, managerial, and investment expertise, and private capital, as well as an assessment of and response to the industrial policies of other nations to support industries in similar critical technology sectors, and deliver such study to the congressional defense committees not later than October 1, 2022.

(7) Reports

(A) Report by Secretary of Defense

Not later than 90 days after January 1, 2021, the Secretary of Defense shall submit to Congress a report on the plans of the Secretary to carry out paragraphs (1) and (6).

(B) Biennial reports by Comptroller General of the United States

Not later than one year after the date on which the Secretary submits the report required by subparagraph (A) and not less frequently than once every two years thereafter for a period of 10 years, the Comptroller General of the United States shall submit to Congress a report on the activities carried out under this subsection.

(b) National network for microelectronics research and development

(1) In general

Subject to the availability of appropriations for such purposes, the Secretary of Defense shall establish a national network for microelectronics research and development—

(A) to enable the laboratory to fabrication transition of microelectronics innovations in the United States; and

(B) to expand the global leadership in microelectronics of the United States.

(2) Activities

The national network for microelectronics research and development shall—

(A) enable cost effective exploration of new materials, devices, and architectures,

² See References in Text note below.

and prototyping in domestic facilities to safeguard domestic intellectual property;

(B) accelerate the transition of new technologies to domestic microelectronics manufacturers; and

(C) conduct other relevant activities deemed necessary by the Secretary of Defense for accomplishing the purposes of the national network for microelectronics research and development.

(3) Selection of entities

(A) In general

In carrying out paragraph (1), the Secretary shall, through a competitive process, select two or more entities to carry out the activities described in paragraph (2) as part of the network established under paragraph (1).

(B) Geographic diversity

The Secretary shall, to the extent practicable, ensure that the entities selected under subparagraph (A) collectively represent the geographic diversity of the United States.

(Pub. L. 116-283, div. H, title XCIX, §9903, Jan. 1, 2021, 134 Stat. 4849; Pub. L. 117-81, div. A, title II, §217, Dec. 27, 2021, 135 Stat. 1596.)

Editorial Notes

REFERENCES IN TEXT

Section 224 of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (a)(2)(E), is section 224 of Pub. L. 116-92, which is set out as a note preceding section 4501 of Title 10, Armed Forces.

Section 2371 of title 10, referred to in subsec. (a)(4), was renumbered section 4021 of Title 10, Armed Forces, by Pub. L. 116-283, §1841(b)(1), as amended by Pub. L. 117-81, §1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 117-81, §217(1), substituted “shall” for “may” in introductory provisions.

Subsec. (b)(3). Pub. L. 117-81, §217(2), added par. (3).

Statutory Notes and Related Subsidiaries

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

For definition of “congressional defense committees” as the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 101 of Title 10, Armed Forces, as made applicable by section 3 of Pub. L. 116-283, which is listed in a table under section 101 of Title 10.

§ 4654. Department of Commerce study on status of microelectronics technologies in the United States industrial base

(a) In general

Beginning not later than 180 days after January 1, 2021, the Secretary, in consultation with the heads of other Federal departments and agencies, as appropriate, including the Secretary of Defense, Secretary of Homeland Security, and the Secretary of Energy, shall undertake a review, which shall include a survey, using authorities in section 4555 of title 50, to assess the capabilities of the United States industrial base to support the national defense in light of the global nature of the supply chain

and significant interdependencies between the United States industrial base and the industrial bases of foreign countries with respect to the manufacture, design, and end use of microelectronics.

(b) Response to survey

To the extent authorized by section 4555 of title 50 and section¹ 702 of title 15, Code of Federal Regulations, the Secretary shall ensure all relevant potential respondents reply to the survey, including the following:

(1) Corporations, partnerships, associations, or any other organized groups domiciled and with substantial operations in the United States.

(2) Corporations, partnerships, associations, or any other organized groups with a physical presence of any kind in the United States.

(3) Foreign domiciled corporations, partnerships, associations, or any other organized groups with a physical presence of any kind in the United States.

(c) Information requested

To the extent authorized by section 4555 of title 50 and section¹ 702 of title 15, Code of Federal Regulations, the information sought from a responding entity specified in subsection (b) shall include, at minimum, information on the following with respect to the manufacture, design, or end use of microelectronics by such entity:

(1) An identification of the geographic scope of operations.

(2) Information on relevant cost structures.

(3) An identification of types of microelectronics development, manufacture, assembly, test, and packaging equipment in operation at such an entity.

(4) An identification of all relevant intellectual property, raw materials, and semi-finished goods and components sourced domestically and abroad by such an entity.

(5) Specifications of the microelectronics manufactured or designed by such an entity, descriptions of the end-uses of such microelectronics, and a description of any technical support provided to end-users of such microelectronics by such an entity.

(6) Information on domestic and export market sales by such an entity.

(7) Information on the financial performance, including income and expenditures, of such an entity.

(8) A list of all foreign and domestic subsidies, and any other financial incentives, received by such an entity in each market in which such entity operates.

(9) A list of regulatory or other informational requests about the respondents' operations, sales, or other proprietary information by the People's Republic of China entities under its direction or officials of the Chinese Communist Party, a description of the nature of each request, and the type of information provided.

(10) Information on any joint ventures, technology licensing agreements, and cooperative research or production arrangements of such an entity.

¹ So in original. Probably should be “part”.