



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, and 252

[Docket DARS-2018-0060]

RIN 0750-AJ82

Defense Federal Acquisition Regulation Supplement: Foreign Commercial Satellite Services and Certain Items on the Commerce Control List (DFARS Case 2018-D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Years 2017 and 2018. One section imposes additional prohibitions with regard to acquisition of certain foreign commercial satellite services, such as cybersecurity risk and source of satellites and launch vehicles used to provide the foreign commercial satellite services, and expands the definition of "covered foreign country" to include Russia. Another section prohibits purchase of items from a Communist Chinese military company that meet the definition of goods and services controlled as munitions items

when moved to the Commerce Control List of the Export Administration Regulations of the Department of Commerce.

DATES: *Effective Date:* **[Insert date of publication in the FEDERAL REGISTER]**.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D020, using any of the following methods:

- o *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for "DFARS Case 2018-D020." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D020" on any attached documents.

- o *Email:* osd.dfars@mail.mil. Include DFARS Case 2018-D020 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after

submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(A&S)DPC/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106; facsimile 571-372-6094.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115-91) and the NDAA for FY 2017 (Pub. L. 114-328) as follows:

A. Section 1603 of the NDAA for FY 2018

Section 1603 amends 10 U.S.C. 2279 to impose additional prohibitions with regard to acquisition of certain foreign commercial satellite services. It addresses cybersecurity risks and the source of satellites and launch vehicles used to provide the foreign satellite services. The definition of "covered foreign country" is expanded to include Russia, in addition to any country described in section 1261(c)(2) of the NDAA for FY 2013 (Pub. L. 112-239), which specifies the People's Republic of China, North Korea, and any country that is a state sponsor of terrorism (currently Iran, North Korea, Sudan, and Syria). 10 U.S.C. 2327, entitled "Contracts: consideration of national security

objectives," is the underlying statute that prohibits DoD from entering into contracts with a firm or subsidiary of a firm, that is owned or controlled by the government of a foreign country that has been identified by the Secretary of State as a state sponsor of terrorism under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)). 50 U.S.C. App. 2405 was subsequently reclassified and renumbered as 50 U.S.C. 4605, which has now been repealed by section 1766(a) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the NDAA for FY 2019, Pub. L. 115-232). 50 U.S.C. 4605(j) has been replaced by section 1754(c) of the Export Control Reform Act of 2018 (to be eventually codified at 50 U.S.C. 4813(c)).

B. Section 1296 of the NDAA for FY 2017

Section 1211 of the NDAA for FY 2006 (Pub. L. 109-163) established the prohibition against purchase of items on the United States Munitions List (USML) from a Communist Chinese military company. Section 1296 of the NDAA for FY 2017 amends section 1211 to prohibit purchase from any Communist Chinese military company, through a contract or subcontract (at any tier), of goods and services controlled as munitions items on the 600 series of the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce. Under the Export Control Reform Initiative, the International Traffic in Arms Regulations (ITAR) and the USML have been amended so

that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls. In parallel, the Export Administration Regulations (EAR) were amended to transition some items from the USML to a series of new export control classification numbers (the 600 series) on the CCL, providing control for military items that do not warrant USML controls, because they provide less than a critical military or intelligence capability, but are not in normal commercial use. The 600 series is so identified when the third character in the 5-character export control classification number is the number "6".

However, an unintended consequence of this transition of some munitions from the USML to the 600 series of the CCL was that the items were no longer covered by the prohibition of section 1211 of the NDAA for FY 2006, prohibiting purchase from Communist Chinese military companies. Therefore, section 1296 of the NDAA for FY 2017 has extended the prohibition to cover items listed in the 600 series of the CCL.

II. Discussion and Analysis

This rule amends the DFARS as follows:

A. Section 1603 of the NDAA for FY 2018

1. *Definitions.* This rule expands the definition of "covered foreign country" to include Russia, as specified in the statute,

and adds the statutory definitions of "cybersecurity risk" and "launch vehicle" at DFARS 225.772-1 and in the associated provision at DFARS 252.224-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, and the clause at DFARS 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, as appropriate.

In addition, the statutory references to the Export Administration Act of 1979 in the definitions of "state sponsor of terrorism" at DFARS 225.772-1 and in the clauses at 252.225-7051 and 252.225-7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, have been revised to refer to "section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232)".

2. *Cybersecurity Risk.* The prohibitions at DFARS 225.772-2 and the provision at DFARS 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representation, are expanded to include prohibition on award of a contract for commercial satellite services to a foreign entity if entering into such contract would create an unacceptable cybersecurity risk for DoD. The procedures at DFARS 225.772-3 further specify that unacceptable cybersecurity risk is to be

determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy, the two officials to whom the statute permits delegation of the authority to enter into a contract, subject to the prohibitions in paragraphs (a) and (b) of the statute.

3. *Satellites and Launch Vehicles.* Restrictions are added at DFARS 225.772-2 and the provision at DFARS 252.225-7049 for contracts for commercial services awarded to any entity (whether or not foreign) with regard to the design or manufacture of the satellite to be used to provide the services, or the launch vehicle that will be used to launch the satellite outside the United States. These restrictions do not apply to a launch that occurs prior to December 31, 2022, or to a satellite service provider that has a contract or other agreement relating to launch service that, prior to June 10, 2018, was either fully paid for by the satellite service provider, or covered by a legally binding commitment of the satellite service provider to pay for such services.

4. *Representations and Disclosures.* The representations are expanded to cover the new restrictions on satellites and launch vehicles, but these new restrictions will only be applicable with regard to commercial satellite services that will use satellites launched or after December 31, 2022. The restriction on launch vehicles does not apply to launches within

the United States. For added clarity, the disclosures that relate to the representations are integrated into the representations.

5. *Clause.* This rule creates a new clause to require compliance during contract performance with the representations in their offer with regard to the origin of the satellite services, satellites, and launch vehicles.

B. Section 1296 of the NDAA for FY 2017

1. *Definitions.* This rule provides a definition of "600 series of the Commerce Control List" and adds the definition of "item" with cross-references to the EAR at 15 CFR 772.1 and ITAR at 22 CFR 120.6 and 22 CFR 120.9. The definitions already contain cross-references to the USML at 22 CFR part 121. For increased ease of reading, the definitions of Communist Chinese military company and "United States Munitions List" are now repeated at DFARS 225.003, rather than just providing a cross-reference at 225.770-1 to the definitions in the clause at DFARS 252.225-7007.

2. *600 series.* This rule amends DFARS 225.770 and the clause at DFARS 252.225-7007 to extend the prohibition on acquisition of USML items from Communist Chinese military companies to apply to items in the 600 series of the CCL.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the applicability of existing DFARS solicitation provisions and contract clauses and adds a new clause as follows:

- To implement section 1603 of the NDAA for FY 2018, this rule amends the provision at DFARS 252.225-7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representation, and adds a clause to enforce compliance with the representations in the associated provisions. This provision and clause will apply to acquisitions not greater than the Simplified Acquisition Threshold (SAT) and acquisitions of commercial items.
- To implement section 1296 of the NDAA for FY 2017, this rule modifies the clause at DFARS 252.225-7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, to prohibit contractors or subcontractors from acquiring items listed on the 600 series of the CCL that are to be delivered under the contract from any Communist Chinese military company. As a result of the Export Control Reform Initiative, certain items were transferred from the USML to a series of new export control classification numbers (the 600 series) in the CCL. In order

to ensure continued prohibition against purchase of items listed in the 600 series of the CCL from a Communist Chinese military company, this rule requires use of the clause in solicitations and contracts involving the delivery of items listed in the 600 series of the CCL, but does not otherwise change the clause prescription. The rule continues to prescribe the use of this clause for use in solicitations and contracts for items valued at or below the SAT. The clause will also apply to the acquisition of commercial items, including Commercially Available Off-the-Shelf (COTS) items, if the items are 600 series items on the CCL, or USML items. Although most 600 series items are not commercial items, and USML items are even less likely to be commercial items, it is possible that some of these covered items will be commercial items and must not be purchased from a Communist Chinese military company.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulation (FAR) Council makes a written determination that it is not in the best interest of the Federal

Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Principal Director, DPC, is the appropriate authority to make comparable determinations for

regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Determinations

- Section 1603 of the NDAA for FY 2018. A determination and finding was signed by the Director, Defense Procurement and Acquisition Policy, on June 23, 2014, that due to potential risk to national security it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT and acquisitions of commercial items from the applicability of 10 U.S.C. 2279. Therefore, a separate determination under 41 U.S.C. 1905-1907 is not required.
- Section 1296 of the NDAA for FY 2017. A determination under 41 U.S.C. 1905 is not required to prescribe DFARS 252.225-7012 for use in solicitations and contracts valued at or below the SAT, because this is consistent with the current applicability of the clause DFARS 252.225-7007, which prohibits acquisitions of items on the USML from Communist Chinese Military companies. Modifying the clause to also cover items listed in the 600 series of the CCL is reinstating the prohibition that applied to those items before the items were moved off the USML and into the 600 series of the CCL. However, in accordance with 41 U.S.C. 1906 and 1907, the Principal Director, DPC, has determined

that it is in the best interest of the Government to apply the requirements of section 1296 of the NDAA for FY 2017 to contracts for the acquisition of commercial items, including COTS. This rule prescribes the use of the clause at DFARS 252.225-7007 in contracts for the acquisition of commercial items, if they involve the acquisition of 600 series or USML items. These items are export-controlled, irrespective of the contracting vehicle, including commercial contracts. The broad prohibition would be consistent with the intent of the law, DoD policy, and our National Defense Strategy with respect to China. The concern is with the integrity of the DoD supply chain and to prevent insertion of malicious items from China into U.S. weapons platforms, information technology systems and other areas, presenting a threat to our warfighters and their ability to defend U.S. national security. Further, because the meaning of the term "commercial" is not aligned between contracting and export control regulations, the disconnect could be used as a loophole for suppliers to violate the prohibition. Therefore, exempting contracts for the acquisition of commercial items (including COTS items) from the statutory prohibition on the acquisition of 600 series and USML items would severely decrease the

intended effect of the statutes and could jeopardize the integrity of the DoD supply chain.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et

seq. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The reason for this rule is to implement section 1603 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and section 1296 of the NDAA for FY 2017. Section 1603 of the NDAA for FY 2018 amends 10 U.S.C. 2279, which prohibits acquisition of certain foreign commercial satellite services. Section 1296 of the NDAA for FY 2017 amends section 1211 of the NDAA for FY 2006 to prohibit purchase from any Communist Chinese military company, through a contract or subcontract (at any tier), of goods and services controlled as munitions items on the 600 series of the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce.

The objectives of the rule are as follows:

- *Section 1603.* To prohibit award of contracts for commercial satellite services to a foreign entity if entering into such contract would create an unacceptable cybersecurity risk. In addition, the definition of covered foreign country is expanded to include Russia (other covered foreign countries are China, North Korea, Iran, Sudan, and Syria). New restrictions are also added with regard to the satellites and launch vehicles to be used to provide the satellite services, but these restrictions do

not apply to launches that occur prior to December 31, 2022.

- *Section 1296.* To prohibit purchase from a Communist Chinese military company of items that meet the definition of goods and services controlled as munitions items when moved to the 600 series of the CCL of the Export Administration Regulations of the Department of Commerce.

DoD estimates that this rule will apply small entities as follows:

- *Section 1603.* This part of the rule will apply to less than 86 small entities. According to Federal Procurement Data System (FPDS) data for FY 2016, 86 small entities were awarded contracts or orders for services under Product Service Code D304 (ADP Telecommunications and Transmission Services), of which commercial satellite services are a subset. Although the focus of the Regulatory Flexibility Act is protection of domestic small business entities that are eligible for assistance from the Small Business Administration, there may be domestic small business entities in the United States that offer the satellite services of a foreign entity that would be restricted by this rule.

- *Section 1296.* This part of the rule will apply to any small entities that intend to provide items on the 600 series of the Commerce Control List under a DoD contract or subcontract. The 600 series consists of items on the Commerce Control List that have an export control classification number of which the third character is a "6". These items were transitioned from the United States Munitions List (USML) to the 600 series, because they have less than a critical military or intelligence capability than the items that remain on the USML, but they are not currently in normal commercial use. Data on the number of entities that can provide such items, and whether they are small or other than small entities, is not available in FPDS, because these items are not readily identifiable in FPDS and are often acquired through subcontracts.

Projected reporting or recordkeeping requirements of this rule are as follows:

- *Section 1603.*

In addition to the current annual representations as to whether the offeror is, or is not, a foreign entity subject to the prohibitions of the statute; or is, or is not, offering commercial satellite services provided by such a foreign entity, this rule adds five more annual representations as to whether the offeror—

- o Is, or is not offering commercial satellite services using satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country;
- o Is, or is not offering commercial satellite services using satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country;
- o Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country;
- o Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country; and
- o Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle

that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

Further information is required if the offeror provides an affirmative response to any of the representations, but such affirmative response and further submission is expected to be extremely rare because of the statutory prohibition and the expected rarity of a waiver by the Under Secretary of Defense for Acquisition and Sustainment or for Policy. Furthermore, this prohibition is only applicable to launches on or after December 31, 2022.

If the satellite service provider responded affirmatively to any of the new representations regarding launch vehicles, if such launches are covered in whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, a de minimis amount of information is required with regard to such contract or agreement in order to establish an exception to the associated prohibitions.

- *Section 1296.* There are no projected reporting or recordkeeping requirements relating to implementation of

section 1296. The only compliance requirements are to not purchase 600 series items from a Communist Chinese military company.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule will not have a significant economic impact on any small entities, unless they are offering commercial satellite services subject to the restrictions of this rule or providing 600 series items from a Communist Chinese military company. DoD was not able to identify any alternatives that would reduce the burden on small entities and meet the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2018-D020), in correspondence.

VII. Paperwork Reduction Act

This rule will affect the information collection requirements in the provision at DFARS 252.225-7049, currently approved through March 31, 2021, under OMB Control Number 0704-0525, entitled Prohibition on Acquisition of Commercial Satellite

Services from Certain Foreign Entities, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible at this time, because the prohibition on use of certain foreign satellites and launch vehicles only applies to launches outside the United States on or after December 31, 2022. The information collection will be updated to reflect these changes when renewed in two years.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the DFARS is immediately revised to include the requirements of the law.

A. Foreign Commercial Satellite Services.

DoD uses commercial satellite services to increase the availability and flexibility of military communications. Commercial satellite services may provide access to bandwidth and services that are unavailable through other means to support a variety of missions. Although these are commercial services, they are still being used to carry out military missions. Use of certain foreign commercial satellite services and foreign launches can pose an unacceptable risk to national security.

Section 1603 of the NDAA for FY 2018 amends 10 U.S.C. 2279 to impose additional prohibitions with regard to acquisition of

certain foreign commercial satellite services, especially from certain "covered foreign countries." Section 1603 expands the definition of "covered foreign country" from China, North Korea, and any country that is a state sponsor of terrorism (10 U.S.C. 2279) to include the Russian Federation. Section 1603 also defines "cybersecurity risk" and provides that DoD shall not enter into a contract for satellite services with a foreign entity if the Secretary of Defense reasonably believes that entering into such a contract would create an unacceptable cybersecurity risk for DoD.

Congress enacted section 1603 in order to provide DoD, when contracting for commercial satellite services, with tools to reduce the perceived risk related to dealing with the Russian Federation. Indicating increasing distrust of Russia, there have been several other sections of the NDAA's in FY 2018 and FY 2019 placing prohibitions on buying critical items from Russia, such as rare earth magnets, tungsten, or telecommunications equipment or services to be used in the DoD nuclear deterrence mission or homeland defense mission. This rule also requires DoD not to enter into a contract for commercial satellite services with any foreign entity if the Secretary of Defense reasonably believes that such contract will present an unacceptable cybersecurity risk.

Currently, there is no regulatory prohibition against contracting with a foreign entity in which the Government of Russia has an ownership interest that enables the government of Russia to affect satellite operations, or a foreign entity that plans to provide satellite services from Russia. There is also no mechanism in place that allows the Secretary of Defense to decide not to enter into a contract with a foreign entity based on the level of cybersecurity risk it would create; in such instances, DoD must either accept the risk and award the contract or cancel the solicitation.

According to data available in the Federal Procurement Data System for fiscal year 2017, DoD awarded 3,715 contracts and orders for commercial supplies or services under the product service code D304, IT and Telecom-Telecommunications and Transmission, to 256 unique entities. It is expected that a subset of these awards were for commercial satellite services. While the universe of contracts and entities affected by this rule is relatively small, a single contract award to one of the foreign entities excluded by this rule could damage our national security.

Without this rule to implement the prohibitions and limitations provided by section 1603, there is no way for DoD contracting officers to exclude the Russian-controlled entities, or the other foreign entities that present an unacceptable

cybersecurity risk, from competing for or being awarded contracts for covered commercial satellite services. This creates an opportunity for Russian interference with DoD satellite communications and increases the risk of cyberattacks by other foreign entities, which could jeopardize our military communications, the lives of our warfighters, and our national security.

B. Certain items on the Commerce Control List.

Section 1211 of the NDAA for FY 2006, prohibited purchase of items on the United States Munitions List (USML) from a Communist Chinese military company, in order to protect the integrity of the supply chain for military items. Section 1296 of the NDAA for FY 2017 extends that prohibition to cover items moved from the USML to the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce. As a result of the Export Control Reform Initiative, beginning in 2013, certain items specially designed for military applications have been transferred from the USML to a new category on the CCL (the 600 series). The 600 series includes such items as F-16 wings, fins, panels, fuselages, cockpit structures, and landing gear, and analogous items from other categories on the USML.

While helpful in facilitating cooperation with our allies and partners, an unintended consequence of this export reform was

that the prohibition imposed by section 1211 of the NDAA for FY 2006 no longer covered these items, since they were no longer on the USML. The Under Secretary of Defense for Policy, including the Defense Technology Security Administration, as well as the offices in the purview of the previous Under Secretary of Defense for Acquisition, Technology, and Logistics, the National Security staff, and others were very concerned about potential acquisition of military components from a Communist Chinese military company, due to potential adverse impact on the integrity of the supply chain for major U.S. weapons systems. These organizations, along with export control stakeholders in the Departments of Commerce and State, were also in favor of continuing the prohibition against purchase of military items, now controlled as 600 series items, from Communist Chinese military companies. After consultation with the DoD Office of General Counsel, DoD determined that the only solution was to seek legislative correction to this problem, resulting in enactment of section 1296 of the NDAA for FY 2017.

600 series items are frequently used in DoD's weapon systems and it is imperative that DoD ensure that the integrity of those weapon systems is maintained by immediately restricting the purchase of these items from Communist Chinese military companies. Until this rule is in effect, there is no basis on which to refuse to buy items with military applications listed

in the 600 series of the CCL from a Communist Chinese military company. Purchase of such items from a Communist Chinese military company poses a serious risk to U.S. national security, the safety of military personnel, and the integrity of the U.S. defense supply chain, because according to DoD information, China is the top source of counterfeit U.S. military electronics.

List of Subjects in 48 CFR Parts 204, 212, 225, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 225, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 204, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Amend section 204.1202 by revising paragraph (2)(ix) to read as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(ix) 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 212.301 by—

a. Redesignating paragraphs (f) (ix) (BB) and (CC) as paragraphs (f) (ix) (CC) and (DD), respectively;

b. In the newly redesignated paragraph (f) (ix) (CC), removing “Commercial Satellite Services from Certain Foreign Entities” and “at 225.772-5” and adding “Certain Foreign Commercial Satellite Services” and “in 225.772-5(a)”, in their place, respectively;

c. Redesignating paragraphs (f) (ix) (D) through (AA) as (f) (ix) (E) through (BB); and

d. Adding new paragraph (f) (ix) (D) and paragraph (f) (ix) (EE).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ix) * * *

(D) Use the clause at 252.225-7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in 225.1103(4), to comply with section

1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAA's for FY 2012 and FY 2017.

* * * * *

(EE) Use the clause at 252.225-7051, Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in 225.772-5(b), to comply with 10 U.S.C. 2279.

* * * * *

PART 225—FOREIGN ACQUISITION

4. Amend section 225.003 by—

- a. Removing paragraph designations (1) through (16);
- b. Adding, in alphabetical order, definitions for “600 series of the Commerce Control List” and “Communist Chinese military company”;
- c. In the definition for “Domestic concerns,” redesignating paragraphs (i) and (ii) as paragraphs (1) and (2);
- d. In the definition for “Eligible product,” redesignating paragraphs (i) introductory text and (i) (A) and (B) as paragraphs (1) and (1) (i) and (ii), respectively, and paragraphs (ii) and (iii) as paragraphs (2) through (3), respectively;
- e. In the definitions of “South Caucasus/Central and South Asian (SC/CASA) state construction material” and “South Caucasus/Central and South Asian (SC/CASA) state end product,” redesignating paragraphs (i) and (ii) as paragraphs (1) and (2);

f. Adding, in alphabetical order, a definition for "United States Munitions List".

The additions read as follows:

225.003 Definitions.

* * * * *

600 series of the Commerce Control List means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a "6" as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of "600 series" in 15 CFR 772.)

* * * * *

Communist Chinese military company means any entity, regardless of geographic location, that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China (including a subsidiary or affiliate of such entity); or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

* * * * *

United States Munitions List means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

5. Revise section 225.770 to read as follows:

225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328). See PGI 225.770 for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

6. Revise section 225.770-1 to read as follows:

225.770-1 Definitions.

As used in this section—

Component means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

Item means—

- (1) A USML defense article, as defined at 22 CFR 120.6;
- (2) A USML defense service, as defined at 22 CFR 120.9; or
- (3) A 600 series item, as defined at 15 CFR 772.1.

Part means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally

subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

7. Revise section 225.770-2 to read as follows:

225.770-2 Prohibition.

Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

225.770-3 [Amended]

8. Amend section 225.770-3, in the introductory text, by removing "supplies or services" and adding "items" in its place.

9. Revise section 225.770-4 to read as follows:

225.770-4 Identifying items covered by the USML or the 600 series of the CCL.

(a) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, supplement no. 1.

(b) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the USML or 600 series of the CCL are themselves munitions (e.g., protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See PGI 225.770-4.

225.770-5 [Amended]

10. Amend section 225.770-5, in paragraph (b)(1), by removing "Acquisition, Technology, and Logistics" and adding "Acquisition and Sustainment" in its place.

11. Revise section 225.772 heading to read as follows:

225.772 Prohibition on acquisition of certain foreign commercial satellite services.

12. Revise section 225.772-1 to read as follows:

225.772-1 Definitions.

As used in this section—

Covered foreign country means—

- (1) The People's Republic of China;
- (2) North Korea;
- (3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

Foreign entity means—

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

Government of a covered foreign country includes the state and the government of a covered foreign country, as well as any

political subdivision, agency, or instrumentality thereof.

Launch vehicle means a fully integrated space launch vehicle.

(10 U.S.C. 2279)

Satellite services means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of December 21, 2018, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

13. Revise section 225.772-2 to read as follows:

225.772-2 Prohibitions.

Except as provided in 225.772-4, the contracting officer shall not award a contract for commercial satellite services to—

(a)(1) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(i) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(ii) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(iii) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(2) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section; or

(b)(1) Any entity, except as provided in paragraph (b)(2) of this section, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite services will be provided using satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is—

(A) Designed or manufactured in a covered foreign country; or

(B) Provided by—

(1) The government of a covered foreign country;

or

(2) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(2) The prohibition in paragraph (b)(1) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

14. Amend section 225.772-3 by—

a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

b. In the newly redesignated paragraph (b) introductory text, removing “paragraph (d)” and “Commercial Satellite Services from Certain Foreign Entities” and adding “paragraph (c)” and “Certain Foreign Commercial Satellite Services” in their place, respectively; and

c. Adding a new paragraph (a).

The addition reads as follows:

225.772-3 Procedures .

(a) (1) The contracting officer shall not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.

(2) When procuring commercial satellite services from a foreign entity, the contracting officer shall review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

* * * * *

15. Amend section 225.772-4 by-

- a. Revising paragraph (a) introductory text; and
- b. In paragraph (a) (1), by removing "Acquisition, Technology, and Logistics" and adding "Acquisition and Sustainment" in its place.

225.772-4 Exception .

(a) The prohibitions in 225.772-2 (a) and (b) do not apply if-

* * * * *

16. Revise section 225.772-5 to read as follows:

225.772-5 Solicitation provision and contract clauses .

(a) Use the provision at 252.225-7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, in solicitations that include the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.225-7049 in the solicitation.

(b) Use the clause at 252.225-7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitation and contracts using FAR part 12 procedures for the acquisition of commercial items.

(c) Use the clause at 252.239-7018, Supply Chain Risk, as prescribed at 239.7306(b), when applicable.

17. Amend section 225.1103 by revising paragraph (4) to read as follows:

225.1103 Other provisions and clauses .

* * * * *

(4) Unless an exception in 225.770-3 applies, use the clause at 252.225-7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7007 [Amended]

18. Amend section 252.204-7007 by—

a. Removing clause date “(JAN 2015)” and add “(DEC 2018)”; and

b. In paragraph (d) (1) (v), by removing “Commercial Satellite Services from Certain Foreign Entities” and adding “Certain Foreign Commercial Satellite Services” in its place.

19. Revise section 252.225-7007 to read as follows:

252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN ITEMS FROM COMMUNIST
CHINESE MILITARY COMPANIES (DEC 2018)

(a) *Definitions.* As used in this clause—

600 series of the Commerce Control List means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a “6” as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of “600 series” in 15 CFR 772.)

Communist Chinese military company means any entity, regardless of geographic location, that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China (including a subsidiary or affiliate of such entity); or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

Item means—

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

United States Munitions List means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

(b) Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

(End of clause)

20. Revise section 252.225-7049 to read as follows:

252.225-7049 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

As prescribed in 225.772-5(a), use the following provision:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL
SATELLITE SERVICES—REPRESENTATIONS (DEC 2018)

(a) *Definitions.* As used in this provision—

Covered foreign country, foreign entity, government of a covered foreign country, launch vehicle, satellite services, and state sponsor of terrorism are defined in the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7051, Prohibition on Acquisition of Certain Commercial Satellite Services.

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)]

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 225.772-4, no contract for commercial satellite services may be awarded to—

(1)(i) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(A) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(B) The foreign entity plans to, or is expected to, provide satellite services under the contract from a covered foreign country; or

(C) Entering into such contract would create an unacceptable cybersecurity risk for DoD; or

(ii) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this provision; or

(2)(i) Any entity, except as provided in paragraph (b)(2)(ii) of this provision, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite service will be provided using satellites that will be-

(A) Designed or manufactured-

(1) In a covered foreign country; or

(2) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) Launched outside the United States using a launch vehicle that is-

(1) Designed or manufactured in a covered foreign country; or

(2) Provided by-

(i) The government of a covered foreign country; or

(ii) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(ii) The prohibition in paragraph (b) (2) (i) (B) of this provision does not apply with respect to launch vehicles for which the satellite service provider has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(c) *Representations.* The Offeror represents that-

(1) It [] is, [] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the covered foreign country:_____;

(2) It [] is, [] is not a foreign entity that plans

to provide satellite services under the contract from a covered foreign country. If affirmative, identify the covered foreign country:_____;

(3) It [] is, [] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the foreign entity and the covered foreign country:_____;

(4) It [] is, [] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide satellite services under the contract from a covered foreign country. If affirmative, identify the foreign entity and the covered foreign country:_____;

(5) It [] is, [] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(6) It [] is, [] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative,

identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country:_____;

(7) It [] is, [] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country:_____;

(8) It [] is, [] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country. If affirmative, identify the covered foreign country:_____; and

(9) It [] is, [] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country:_____.

(d) If the Offeror has responded affirmatively to any representations in paragraphs (c)(7) through (9) of this provision, and if such launches are covered in whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, provide the following information:

(1) The entity awarded the contract or other agreement:_____.

(2) The date the contract or other agreement was awarded:_____.

(3) The period of performance for the contract or other agreement:_____.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

21. Amend section 252.225-7050 by-

- a. Removing clause date "(JAN 2018)" and adding "(DEC 2018)" in its place; and
- b. In paragraph (a), revising the definition of "State sponsor of terrorism".

The revision reads as follows:

252.225-7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

* * * * *

(a) * * *

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria.

* * * * *

22. Add section 252.225-7051 to read as follows:

252.225-7051 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services.

As prescribed in 225.772-5, use the following clause:

PROHIBITION ON ACQUISITION OF CERTAIN FOREIGN COMMERCIAL SATELLITE SERVICES (DEC 2018)

(a) *Definitions.* As used in this clause—

Covered foreign country means—

- (i) The People's Republic of China;
- (ii) North Korea;
- (iii) The Russian Federation; or
- (iv) Any country that is a state sponsor of terrorism.

(10 U.S.C. 2279)

Foreign entity means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

Government of a covered foreign country includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

Launch vehicle means a fully integrated space launch vehicle.

(10 U.S.C. 2279)

Satellite services means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Limitation.* Unless specified in its offer, the Contractor shall not provide satellite services under this contract that—

(1) Are from a covered foreign country; or

(2) Except as provided in paragraph (c) of this provision, use satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is designed or manufactured—

(A) In a covered foreign country; or

(B) Provided by—

(1) The government of a covered foreign country;

(2) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(c) *Exception.* The limitation in paragraph (b) (2) of this provision shall not apply with respect to—

(1) A launch that occurs prior to December 31, 2022; or

(2) A satellite service provider that has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(End of clause)

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