

DOD changes to list of Chinese military companies may impact suppliers, contractors

By Adelia R. Cliffe, Esq., Maria Alejandra (Jana) del-Cerro, Esq., Jeremy Iloulian, Esq., and Alexandra Barbee-Garrett, Esq., Crowell & Moring LLP*

JANUARY 24, 2025

What you need to know

Key takeaway #1

The U.S. Department of Defense added at least 70 entities to its list of Chinese military companies, including battery maker Contemporary Amperex Technology Co., Ltd. (CATL), drone maker Autel Robotics, chipmaker Changxin Memory Technologies Inc. (CXMT), WeChat's parent company Tencent, AI developer SenseTime Group, and shipping company COSCO Shipping, among dozens of others, at the same time that it removed six entities from the list.

Key takeaway #2

Although primarily a "name and shame" list, designation as a Chinese military company on the 1260H list has secondary effects for entities receiving funding from DoD for fundamental research, on the provision of goods and services to DoD, and for contracting with lobbying firms.

Key takeaway #3

In the future, Congress will likely use this list of Chinese military companies to impose further restrictions.

Introduction

On January 2, 2025, the U.S. Department of Defense (DoD) updated the 1260H List (<https://bit.ly/3WvH9Qy>) of entities identified as "Chinese military companies" (CMC) operating in the United States, as required by section 1260H of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Section 1260H), adding new entities and removing others. The updated 1260H List now includes 76 entities.

Who is a DoD designated 'Chinese military company'?

Section 1260H defines a "Chinese military company" as an entity (i) owned or controlled by, or acting as an agent of or on behalf of the People's Liberation Army or any other component of the Central Military Commission of the Chinese Communist Party, or (ii) that is a "military-civil fusion contributor to the Chinese defense industrial base," and, in both cases, is engaged in providing commercial services, manufacturing, producing, or exporting.

What constitutes a "military-civil fusion contributor to the Chinese defense industrial base" is based upon one of multiple criteria related to an entity's cooperation or dealings with the Chinese government.

The updated 1260H List is also significant because it includes, for the first time, instructions to request "reconsideration" of an entity's 1260H List designation.

Since June 2021, when DoD first published the 1260H List, DoD has made a number of additions to and, in fewer instances, removed entities from, the 1260H List. Here, DoD added at least 70 and removed six entities from the 1260H List.

The 1260H-specific prohibitions are in addition to and distinct from the previously enacted prohibitions on CXMT and CATL that will go into effect starting in 2027.

Those restrictions will bar the government from purchasing or using semiconductor products and services from CXMT, effective on December 23, 2027 (per the FY 2023 NDAA, section 5949, <https://bit.ly/4julnpc>), and will bar DoD from purchasing CATL batteries, effective on October 1, 2027 (per the FY 2024 NDAA, section 154, <https://bit.ly/40FHuma>).

New process to challenge designation

The updated 1260H List is also significant because it includes, for the first time, instructions to request "reconsideration" of an entity's 1260H List designation.

The reconsideration process, likely created in response to recent litigation challenging the validity of certain 1260H List designations (<https://reut.rs/4hlhnGs>), requires an entity seeking reconsideration to submit a "detailed description" with supporting evidence of why it should be removed from the 1260H List.

This reconsideration process comports with the new requirement for DoD to provide written justification for any addition to or removal from the 1260H List, enacted in section 1346 of the FY 2025 NDAA.

What happens if an entity is on the 1260H list?

While Section 1260H does not itself implement any prohibitions for identified companies, other notable prohibitions rely on the 1260H List.

Section 805 of FY 2024 NDAA, once implemented, will prohibit DoD from directly or indirectly procuring end products and services from an entity on the 1260H List.

- **Effects for research institutions.** DoD in a June 2023 memorandum (<https://bit.ly/3PKr8SY>) notified research institutions that receive DoD funding for fundamental research projects (such as universities, research and development facilities, and laboratories) that DoD's funding decisions will now require or recommend that such institutions implement mitigation measures if the research institution or individuals involved in DoD-funded research also have associations or affiliations with entities on the 1260H List.
- **Prohibition on DoD procuring goods and services from Section 1260H list.** Section 805 of FY 2024 NDAA (<https://bit.ly/42qYSMU>), once implemented, will prohibit DoD from directly or indirectly procuring end products and services from an entity on the 1260H List. The direct and indirect prohibitions go into effect on June 30, 2026 and June 30, 2027, respectively. The prohibitions do not extend to purchases of goods, services, or technology that connect goods or services to third party services (e.g., interconnection), and the indirect prohibition does not apply to components, defined broadly as an item supplied to the federal government as part of an end item or of another component.
- **Prohibition on DoD contracting with entities that contract with lobbyists for entities on the 1260 list.** Section 851 of the FY 2025 (<https://bit.ly/4g8f9cv>) NDAA prohibits DoD from entering into contracts with any company (or the company's parent or subsidiary) that has a contract with any entity that engages in "lobbying activities" (as defined under the Lobbying

Disclosure Act) for an entity on the 1260H List. The prohibition takes effect June 30, 2026. The Joint Explanatory Statement (<https://bit.ly/42uAFFv>) accompanying the FY 2025 NDAA makes clear that Section 851 is yet another measure to give teeth to the 1260H List. The Statement also appears to connect Section 851 to section 812 of the FY 2024 NDAA (<https://bit.ly/42qYSMU>, which prohibits consulting firms from working with certain identified foreign entities but did not explicitly list entities on the 1260H List) by requiring GAO to develop a report of the national security risks posed by consulting firms who simultaneously contract with DoD and the Chinese government or its proxies or affiliates and to include DoD's measures to restrict and enforce contractual terms related to conflicts of interest.

Congress could impose new restrictions on entities on the 1260H List and harmonize the 1260H List with U.S. sanctions and export restricted party lists.

Relatedly, while not a formal prohibition, most screening providers include the 1260H List in their standard screening packages. Dealings with entities on the 1260H List will often invite questions from other companies' compliance teams when they are made aware, and transactions with entities on the 1260H List or those who deal with them could be delayed.

What to look for going forward

Congress has targeted entities on the 1260H List, and will likely continue to do so, meaning that Congress could impose new restrictions on entities on the 1260H List and harmonize the 1260H List with U.S. sanctions and export restricted party lists.

Congress considered, but did not enact, several such measures in the last Congress, including proposals to impose asset-freezing sanctions on the 1260H List, cross-list 1260H List designated entities on sanctions and export restricted party lists, prohibit certain battery procurements from 1260H List entities, and bar security exchanges from listing securities issued by 1260H List entities.

In addition, Congress has called for prohibitions on investment in 1260H List entities. Whether these measures will be reintroduced in the 119th Congress is unclear, but we anticipate that Congress and the Trump administration will make China a significant focus and seek to use the Section 1260H List to greater effect.

About the authors



(L-R) **Adelicia R. Cliffe**, a partner and co-chair of **Crowell & Moring LLP**'s government contracts group, helps companies with cross-border and national security issues. She is based in Washington, D.C., and can be reached at acliffe@crowell.com. **Maria Alejandra (Jana) del-Cerro**, a partner in the firm's international trade and government contracts groups, advises clients regarding U.S. regulation of outbound trade, including U.S. export controls. She is based in Washington, D.C., and can be reached at mdel-cerro@crowell.com. **Jeremy Ilouljian**, a counsel in the firm's international trade group, focuses on cross-border matters and policy developments that touch U.S. national security, international trade and foreign investment. He is based in Chicago and can be reached at jilouljian@crowell.com. **Alexandra Barbee-Garrett**, a counsel in the firm's government contracts practice, advises clients on supply chain and domestic sourcing, compliance, and investigations. She is based in Washington, D.C., and can be reached at abarbee-garrett@crowell.com. This article was originally published Jan. 9, 2025, on the firm's website. Republished with permission.

This article was published on Westlaw Today on January 24, 2025.

* © 2025 Adelicia R. Cliffe, Esq., Maria Alejandra (Jana) del-Cerro, Esq., Jeremy Ilouljian, Esq., and Alexandra Barbee-Garrett, Esq., Crowell & Moring LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.