MAY 23, 2019

Executive Order On Securing the Information and Communications Technology and Services Supply Chain: Steps You Need to Take

by Charles W. Gray , Gunjan R. Talati

On May 15, 2019, President Trump issued Executive Order 13873 entitled "Securing the Information and Communications Technology and Services Supply Chain." The Executive Order declares a national emergency regarding telecommunications equipment that could pose a national security threat. It also prohibits U.S. companies from acquiring, exporting, importing, transferring, installing, or using any telecommunications equipment that the Department of Commerce declares to be a national security risk. As a result, the U.S. Department of Commerce Bureau of Industry and Security ("BIS") published a final rule effective May 16, 2019, adding several foreign companies to the Entity List ("EL"). Suppliers should read the final rule to determine if their customers are on the EL.

Suppliers who provide telecommunications products, subject to the Export Administration Regulations ("EAR"), to EL companies must obtain a license from the BIS or face steep civil and/or criminal penalties. Items are subject to the EAR if they are (1) physically located in the United States, (2) of U.S. origin, wherever located, (3) manufactured outside the U.S. but incorporating more than de minimis levels of controlled U.S. content (i.e., more than 25% for most countries including China, and more than 10% for sanctioned territories), and (4) some foreign direct products of certain national security controlled U.S. technology or software.

While the Executive Order serves to place restrictions on items subject to the EAR, it does not act as a comprehensive ban on dealing with the companies on the EL. Put differently, the EL does not act as a Specially Designated National restriction.

Companies operating in the telecommunication industries should check the final rule to determine if a customer is now on the EL. If so, companies should evaluate whether what they sell to any such customers are captured by the scope of the final rule (i.e., subject to EAR).

Additional rulemaking from the Department of Commerce is expected within the next 150 days. Suppliers should monitor any proposed rules in preparation of potential impacts to their operations. Additionally, suppliers who are unsure whether the Executive Order and final rule directly affects them can request an advisory opinion from the BIS for further clarification.