

Biden executive order kicks off government-wide review of supply chains

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On 24 February 2021, President Biden issued an [Executive Order](#) (EO) that launches an examination of America's supply chains. See EO No. 14017, 86 Fed. Reg. 11849 (Feb. 24, 2021). The Administration's ultimate goal is ambitious: to insulate supply chains from everything from geopolitics to extreme weather to pandemics—all while boosting manufacturing and research in America, including with respect to the aerospace and defense industry sector.

The EO is only an initial step toward this goal. It orders two reviews of America's supply chains. The reviews differ in scope and duration. The EO also asks federal agencies to propose policies to strengthen supply chains, as America's supply chain is an issue “of both concern for economic security as well as our national security.”¹ Importantly, the EO directs agencies to consult with industry throughout the process. See EO Sec. 2. The EO does not, however, identify the forums for government-industry consultations. In the coming weeks, the aerospace and defense industry should watch for, and request, opportunities to engage with agencies as they address the EO.

The EO's main initiatives:

- **The EO orders a review of select supply chains in the next 100 days.** The EO taps four departments—Defense, Commerce, Health and Human Services (HHS), and Energy—to lead swift reviews of supply chains for, respectively, critical minerals, semiconductors, pharmaceuticals, and high-capacity batteries. In addition to pointing out vulnerabilities in the supply chains, the departments will recommend policy changes to address the vulnerabilities. See Sec. 3(b).
- **The EO sets a one-year deadline for more extensive assessments of supply chains for six major industries, including aerospace and defense.** The EO orders reviews of supply chains for the defense industrial base, the information and communications technology (ICT) industrial base, the energy sector industrial base, and the transportation industrial base, among others. Sec. 4(a)(i)–(vi). Specifically, the EO directs the Secretary of Defense to submit a report on supply chains for the defense industrial base, which should identify those areas where civilian supply chains are dependent upon other nations. Sec. 4(a)(ii). Commerce and the Department of Homeland Security are also directed to report on supply chains for critical sectors and subsectors of the ICT industrial base. Sec. 4(a)(iii).

¹ Remarks by President Biden at Signing of an Executive Order on Supply Chains, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/24/remarks-by-president-biden-at-signing-of-an-executive-order-on-supply-chains/>

Certain industry sectors, including aerospace and defense, should consider conferring with government agencies early in the review process to advocate regarding the appropriate scope of the agencies' reviews. Indeed, the EO alludes to the indistinct contours of its broad industry categories and gives the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) authority to modify the agencies' reviews to include additional goods and materials. *See* Sec. 4(b).

- **The EO requires agencies to submit comprehensive reports that identify risks to supply chains and outline policies to strengthen supply chains.** The EO prescribes a wide range of topics that agencies must assess in their reports. *See* Sec. 4. The APNSA and the APEP will consolidate the agencies' reports into a set of recommendations to shore up America's supply chains. These recommendations also will consider policy changes in the areas of trade, workforce development, and government contracting. *See* Sec. 5. Contractors should monitor agencies' reports over the next year for calls to amend federal acquisition regulations. *See* Sec. 5(i).

Supply chain issues have taken center stage over the last few years, as concerns have increased over domestic supply chain resiliency, the reliance on foreign nations, and the availability of supplies during the COVID-19 pandemic. As we have discussed previously, the government's focus on supply chain security is not new, but there has been increased focus on the issue and a call for it to be dealt with more aggressively.² Recent news, such as the SolarWinds attack, has spotlighted the real-world consequences that can arise if vulnerabilities in the supply chain are not addressed. Moreover, Senate Majority Leader Chuck Schumer has said recently that the Senate will act this spring on legislation that will include provisions to improve supply chains. Observers are also gauging Congress's and the Administration's interest in fully funding semiconductor legislation that was included in the FY2021 National Defense Authorization Act.

It is not clear how the actions set out in the EO will complement these and other executive and legislative policies. One unanswered question is how the recommendations that emerge from the EO will affect the Commerce Department's interim final rule on Information and Communications Technology and Services (ICTS) supply chains. *See* 86 Fed. Reg. 4909 (Jan. 19, 2021). This rule attempts to safeguard ICTS supply chains by empowering the Commerce Department to block certain ICTS transactions that it deems risky.³ The Cyberspace Solarium Commission has also advocated for the creation of a national ICTS supply chain strategy that would coordinate efforts across different agencies and departments, which could potentially be addressed in these supply chain reviews.⁴

What is clear is that more federal action may be afoot. Aerospace and defense companies hoping to influence federal policy on supply chains should prepare to engage with the administration as agencies develop proposals to strengthen supply chains. The aerospace and defense industry should also prepare to sustain their advocacy throughout any subsequent rulemakings or legislative initiatives.

² *See, e.g.*, U.S. Government's Increased Efforts in Supply Chain Integrity (Aug. 2018), *available at* https://www.hoganlovells.com/~media/hoganlovells/pdf/2018/2018_08_30_adg_insights_supply_chain_risks_in_adg_sector.pdf?la=en; Managing the ADG supply chain in the age of protectionism (Mar. 2019), *available at* https://www.hoganlovells.com/~media/hoganlovells/pdf/2019/2019_03_21_adg_insights_managing_the_adg_supply_chain_in_the_age_of_protectionism.pdf?la=en

³ The rule, which was published in the final days of the Trump administration, was set to take effect in March, but may be delayed pending President Biden's freeze on Trump administration rulemakings.

⁴ Cyberspace Solarium Commission, Report (July 2020), *available at* <https://www.solarium.gov/report>; Cyberspace Solarium Commission, Building a Trusted ICT Supply Chain (Oct. 2020), *available at* <https://www.solarium.gov>.

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