ITI Promoting Innovation Worldwide

What FAR Case 2019-009 Means for Tech

Meeting with Office of Information and Regulatory Affairs

April 6, 2020

Global Headquarters
700 K Street NW, Suite 600
Washington, D.C. 20001, USA
+1 202-737-8888

Europe Office
Rue de la Loi 227
Brussels - 1040, Belgium
+32 (0)2-321-10-90

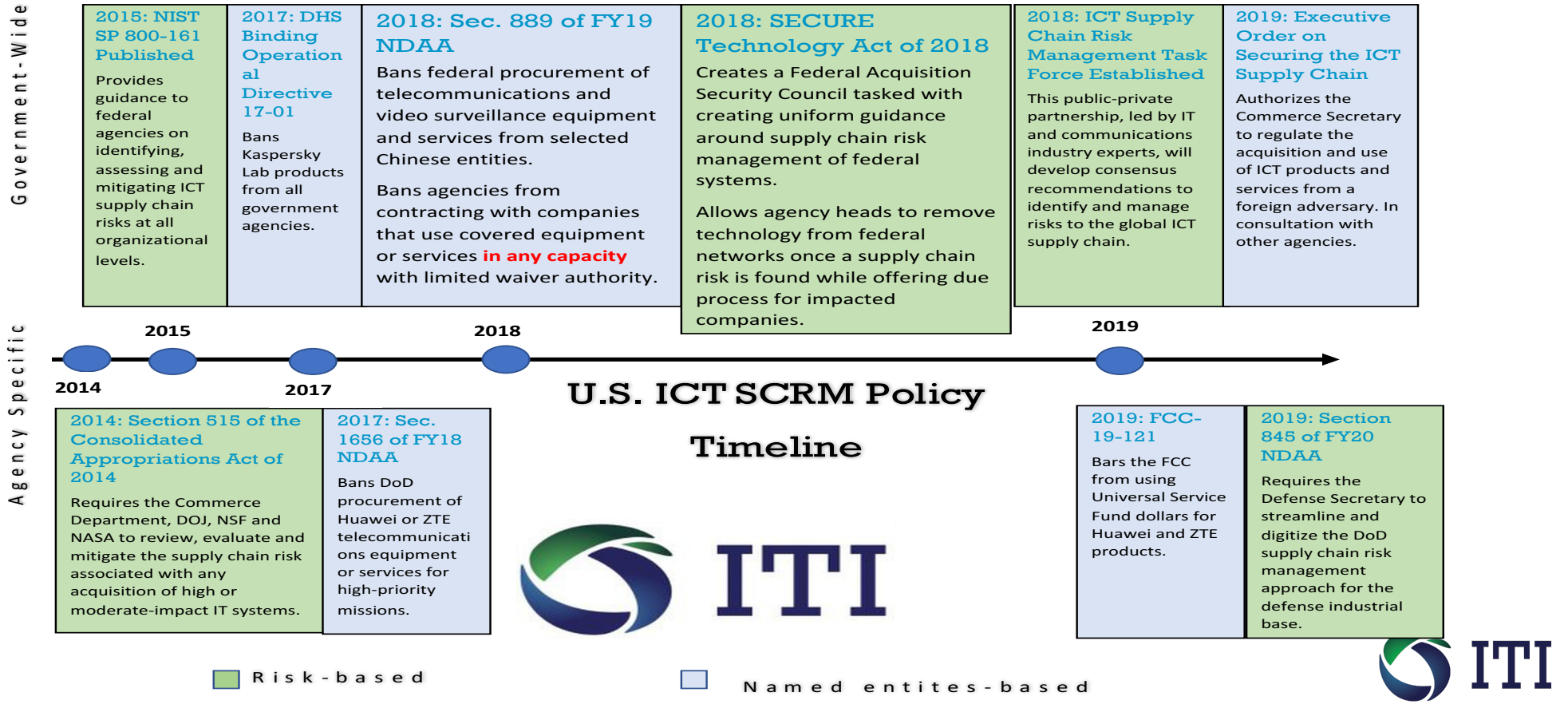
info@itic.org
itic.org

About the Information Technology Industry Council (ITI):

ITI

Promoting Innovation Worldwide

Complex landscape of USG Supply Chain Risk Management



ITI
Promoting Innovation Worldwide

Contracting provisions in Sec. 889 of FY19 NDAA

- Subsection(a)(1)(A): Direct prohibition
  - Restricts federal government from contracting with Huawei, ZTE, Hytera, Dahua, Hikvision and any other company determined by the Secretary of Defense to be owned or controlled by, or otherwise connected to, the People's Republic of China
  - In effect as of August 13, 2019; Addressed through FAR Case 2018-017
- Subsection(a)(1)(B): Indirect prohibition
  - Restricts federal government from contracting with entities that use covered equipment as a substantial or essential component of any system or as a critical technology as part of any system
  - Will go into effect on August 13, 2020; Addressed through current FAR case

ITI
Promoting Innovation Worldwide

Key terms remain undefined in statute

Key Terms	Clarity Needed
"Entity"	• Will the definition cover a company's subsidiaries and affiliates?
"Use"	• Will the definition cover commercial use or merely use in the performance of a federal contract?
"Substantial or essential component"	• FAR Case 2018-017: "Any component necessary for the proper function or performance of a piece of equipment, system or service"
"Critical technology"	▪ Export Control Reform Act of 2018 and North American Industry Classification System codes
"Owned or controlled by"	▪ 2014 Commerce, Justice, Science appropriations law ▪ Proposed FIRRMA regulations

ITI
Promoting Innovation Worldwide

Waiver process is unclear

- Statute provides limited waiver authority
  - Agency heads can issue a two-year waiver under limited circumstances
  - After two years, Director of National Intelligence has sole waiver authority
- Rule should lay out clear process
  - Micropurchases
  - GWACs
- Lack of alternative equipment options should be considered a mitigating factor

ITI
Promoting Innovation Worldwide

Bottom Line: Unintended consequences of this law could erode U.S. technological dominance

- Compliance almost impossible for global companies
- Options very limited in certain geographies
- Increased costs from switching suppliers and damages from canceling contracts

- Many innovative companies will face pressure to exit federal market
  - Compliance
  - Economics

- A strict interpretation of this law may result in limited government ability to procure innovative IT goods and services and best-in-class warfighting technology

ITI
Promoting Innovation Worldwide

National security threat is already being addressed

- Companies are using tools at their disposal to mitigate risk
  - NIST SP 800-161 Appendix D, Threat Scenario 2
  - DHS Information and Communications Technology Supply Chain Risk Management (SCRM) Task Force

- Agencies have authority to remove problematic equipment from federal networks
  - SECURE Technology Act of 2018

ITI
Promoting Innovation Worldwide

Our asks

- Clearly define and scope key terms
- Simplify waiver process as to not interrupt government use of innovative technologies
- Look to pre-existing risk-based authorities to combat present and future cyber supply chain threats

ITI
Promoting Innovation Worldwide

Questions?

Kelsey Kober, Manager of Policy, Public Sector
kkober@itic.org
202-570-1177

ITI
Promoting Innovation Worldwide