

# Imminent ICTS Supply Chain Rule Will Affect Virtually All US Companies

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*Companies originally expected the rule to be rescinded, considering it unimplementable due to its broad scope. It is unlikely that the ICTS IFR will see immediate use as the Biden administration prioritizes its domestic agenda.*

With the Biden administration set to maintain a Trump-era regulation on information and communication technology and services (ICTS) supply chains, companies are fearful that its broad scope will not only require costly compliance mechanisms, but also make it impossible to meaningfully implement.

## How did we get here?

The regulation in question is the interim final rule (IFR) on Securing the Information and Communications Technology and Services Supply Chain, which was [released](#) by the Department of Commerce January and will enter into force on March 22. The IFR implements a May 2019 [executive order](#) empowering the secretary of commerce to review, prohibit, or mitigate ICTS transactions that involve foreign adversaries—including China—or pose an undue risk to US national security. Reviews are based on referrals from Commerce or other interagency heads.

The rule has been updated from a [previous draft](#) to include a 180-day review for decisions and now specifies six types of transactions under the IFR's purview. Nonetheless, the updates did little to assuage concerns of companies:

- **Undefined scope:** It is unclear whether the scope of transactions covered by the IFR only covers inbound ICTS transactions or if it has an extraterritorial component. This has led to general confusion among companies who have different interpretations of where their compliance focus needs to be.
- **Volume-based transactions criteria:** The IFR covers ICT products and services that use, process, or maintain personally identifiable information of 1 million Americans within a 12-month period. Similarly, products that have been sold to 1 million Americans within the preceding 12 months of an ICTS transaction are also covered. Companies have consistently maintained that volume is not a meaningful indicator of national security risk and fear that this framework will needlessly encompass harmless ICTS transactions.

- **Increased uncertainty and compliance costs:** Given the wide purview of the IFR and the ubiquity of technology in all industries, members assert that the IFR inserts uncertainty and risk into every technology-related purchase or acquisition. As a result, companies are unable to gauge the extent to which their operations will be impacted and may be driven to establish costly compliance mechanisms out of an abundance of caution. This is corroborated by the Department of Commerce's own [regulatory impact analysis](#) which projects the IFR to affect over 4 million firms, with a direct impact for 268,000 firms, and a total cost in the tens of billions of US dollars.

Given the challenges posed by the IFR, many members originally predicted that it would be delayed, modified, or revoked due to its perceived impracticality and its association with the Trump administration. Now that Commerce officials have announced they will follow through with implementation, many companies are struggling to come up with compliance and risk assessment procedures for a regime [some analysts](#) consider to be as expansive as the Committee on Foreign Investment in the United States.

### Next steps

China-related issues are likely to take a temporary backseat to domestic initiatives as the Biden administration finds its footing. It is possible that the ICTS regime will not be very active in the near future (though USCBC understands that toward the end of the previous administration, two cases had already been referred to Commerce for review by the Department of Justice). It remains unclear where staffing and funding for implementation will come from, which could delay the process and may require congressional action to allocate funding.

Commerce has [committed](#) to implementing a licensing regime to supplement the IFR by mid-May. Allowing companies to seek approval to enter into a proposed ICTS transaction has the potential to mitigate some of the uncertainty. Commerce has also [committed](#) to issuing a subsequent final rule that takes industry feedback into consideration.

