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FCC Updates Equipment Authorization Rules

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In 2022, the Federal Communications Commission adopted rules to implement the Secure Equipment Act of 2021. Those rules, which in large part took effect on February 6, 2023, prevent manufacturers on the FCC's Covered List – companies whose products are deemed to pose a risk by national security agencies – from obtaining the equipment authorizations necessary to sell new or updated products in US markets. Any manufacturer on the list is subject to the ban, but the FCC's new rules do not apply to information security products, solutions and services, or telecommunications services provided by entities on the Covered List.

Under the new rules, no applications for affected equipment filed by any of the listed companies or their affiliates will be granted. The new rules cover both equipment that requires affirmative approval and equipment that is deemed approved under the FCC's Supplier's Declaration of Conformity program, which is used for a wide range of equipment sold to the consumer market. In addition to preventing these companies from introducing new equipment into the US market, the rules prohibit companies from making changes that would require additional authorization to existing equipment that includes components from manufacturers on the Covered List.

The FCC's new rules do not prevent manufacturers on the Covered List from selling equipment that already has been authorized. However, the FCC has asked for comment on whether it should revoke all existing equipment authorizations for manufacturers on the Covered List. Revocation would prevent future sales of equipment manufactured by these companies or any other company that is placed on the Covered List in the future, potentially including equipment already in the supply chain in the US. Action on this proposal could come in the next several months, and any new rules potentially could be effective before the end of 2023.

Next steps for companies?

These new rules are among several actions taken by the US government that suggest that it would be prudent for any company that currently uses, offers to consumers, or recommends the use of any services provided by or equipment manufactured by companies on the Covered List to explore alternatives – and be prepared for the possibility that products from those companies will be forced from the US marketplace. It also may be prudent to evaluate the potential risks of purchasing equipment and services from other companies that may be added to the Covered List based on determinations by national security agencies. Companies and products can be added to the Covered List at any time, and the FCC is not required to provide notice or an opportunity to comment before doing so.

For additional information on the FCC's new rules, contact one of the Cooley lawyers listed below.

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