Cooley

Bulk-Power System Order: What Utilities and Industry Players Need to Know

September 16, 2026

On August 26, 2026, President Donald Trump signed Executive Order 14421 (EO), declaring a national emergency arising from foreign exploitation of vulnerabilities in the bulk-power system and imposing new restrictions on transactions involving that system. While framed in country-neutral terms, the EO's operative definitions, historical precedent and underlying threat assessment make clear that Chinese companies and China-linked supply chains likely are its principal targets. Companies that source equipment, components, software, firmware or maintenance services from Chinese manufacturers – or from joint ventures, subsidiaries or contract manufacturers with Chinese ownership or jurisdictional ties – face the most immediate exposure and should be evaluating their risk now.

China is expressly listed among countries subject to a policy of denial under International Traffic in Arms Regulations (ITAR) section 126.1 – the specific provision the EO incorporates to define "Covered Foreign Entities." The Department of Energy's (DOE) only prior implementing action under the predecessor 2020 order exclusively targeted Chinese-linked equipment. As discussed in detail below, final regulations implementing the EO must be published by the DOE in December; however, now is the time for companies with any Chinese nexus in their bulk-power supply chains to conduct supply chain audits, review financing contracts and assess their exposure. Companies should also consider participating in the rulemaking process to shape key definitions and provisions.

The EO prohibits "any acquisition, importation, transfer, or installation of any foreign-produced bulk-power system electric equipment (transaction) by any person, or with respect to any property, subject to the jurisdiction of the United States," where:

1. A foreign country or national has any interest in the transaction (including through a supply contract).
2. The transaction was initiated after August 26, 2026.
3. The secretary of energy determines that:
    a. The equipment (or associated components, software, firmware, digital services, maintenance services or remote-access capabilities) was designed, developed, manufactured or supplied by persons owned by, controlled by or subject to the jurisdiction or direction of a "Covered Foreign Entity."
    b. The transaction poses an undue risk of sabotage, subversion, unauthorized access, supply disruption or catastrophic effects on US critical infrastructure or the economy, or otherwise poses an unacceptable risk to US national security or the safety of US persons.

Scope of covered infrastructure

The "bulk-power system" encompasses facilities and control systems necessary to operate an interconnected electric energy transmission network, plus generation facilities needed for reliability, including transmission lines rated at 69 kV or higher. Local distribution facilities are expressly excluded.

Scope of covered equipment

"Bulk-power system electric equipment" is defined by a detailed illustrative list: reactors, capacitors, substation transformers, utility-scale and grid-connected inverters, battery energy storage systems, uninterruptible power supply (UPS) systems supporting critical infrastructure, generators, generation turbines, high-voltage circuit breakers, protective relaying, metering equipment and industrial control systems – including remote terminal units (RTUs), programmable logic controllers (PLCs) and intelligent electronic devices (IEDs). Agencies may also consider associated software, firmware, remote-access capabilities, life cycle maintenance and supply chain dependencies. Equipment with broader application unrelated to the identified national security concerns is excluded.

‘Foreign produced’

An article is “foreign produced” if it is not manufactured, produced or assembled in the United States. The EO provides no customs-style rules for substantial transformation, country of origin or de minimis foreign content. A product assembled domestically from foreign components may have a textual argument that the final article is not “foreign produced,” but this is not a categorical safe harbor. DOE may examine critical components, firmware, remote access and supply chain dependencies, and the EO separately prohibits transactions structured to evade its requirements.

Existing equipment

The secretary of energy may impose conditions on the continued use, operation, maintenance, servicing or updating of qualifying foreign equipment already installed before August 26, 2026, including requiring its identification, isolation, monitoring, disconnection, replacement or removal. Before ordering the more disruptive remedies, the secretary must consider reliability and safety effects, replacement availability and continuity of essential service, and may phase compliance. This does not create an immediate fleetwide “rip-and-replace” mandate, but installed assets may become subject to technical conditions, increased monitoring, restricted maintenance arrangements or accelerated replacement requirements – creating potentially material exposure for asset owners, lenders and project buyers.

Impacted industries

The EO’s practical reach will depend on DOE’s implementing rules, but its express terms create direct exposure for utilities and transmission owners/operators (particularly those procuring or operating equipment rated 69 kV or above from higher-risk jurisdictions); energy infrastructure developers across all generation technologies; grid technology, storage and inverter suppliers (the most significant expansion relative to 2020); data center developers and operators to the extent their equipment ties into the bulk-power system; equipment manufacturers and supply chain vendors facing expanded country-of-origin and ownership disclosure demands; investors, lenders and M&A participants who should add the EO to regulatory and R&W insurance diligence; and federal contractors who may be affected by forthcoming Federal Acquisition Regulation (FAR) revisions prioritizing US-manufactured energy infrastructure.

Mitigation, pre-qualification and anti-evasion

The secretary may negotiate mitigation measures as a precondition to approving an otherwise prohibited transaction and may publish a pre-qualified equipment and vendor list exempt from the prohibition, while retaining authority to later regulate even pre-qualified equipment or suppliers. Any transaction that evades, avoids or attempts to violate the order – and any conspiracy to do so – is separately prohibited. Companies should document sourcing determinations and business rationales and avoid restructurings designed to obscure country, ownership or service provider connections.

Implementation timeline

Within 120 days (by December 24, 2026), the secretary of energy – in consultation with the Office of Management and Budget, the secretaries of war and homeland security, and the national intelligence director – must publish implementing rules, including criteria for identifying Covered Foreign Entities and licensing procedures for otherwise prohibited transactions. Within 180 days (by February 22, 2027), the secretary must submit recommended FAR revisions to integrate national security screening into federal energy infrastructure procurement and prioritize US-manufactured equipment; the FAR Council then has 90 days to consider proposing those revisions for notice and comment.

As a first step toward implementation, on September 9, 2026, DOE published a request for information (RFI) seeking stakeholder input on key implementation questions, including the scope of covered equipment and transactions, risks associated with Covered Foreign Entities, supply chain and remote-access practices, mitigation of existing equipment, licensing and pre-qualification procedures, domestic manufacturing capacity, federal procurement, and potential economic, reliability, safety and small-entity impacts. Written responses are due by October 9, 2026.

Broader scope than prior bulk-power regulation

The EO is not the first attempt to regulate foreign equipment in the bulk-power system. On May 1, 2020, the first Trump administration declared a similar national emergency and authorized DOE to prohibit transactions involving equipment connected to "foreign adversaries." DOE implemented that order in December 2020 with a Prohibition Order targeting limited transmission-level equipment from China at critical defense facilities. However, full implementation of this effort was suspended in January 2021 with the change in administration. Several features distinguish the 2026 EO from its predecessor.

First, existing, already-installed equipment is now in scope. The 2020 order applied only to transactions initiated on or after specified effective dates; neither it nor the Prohibition Order reached previously installed equipment. The 2026 order expressly authorizes the secretary to require isolation, disconnection, replacement or removal of qualifying equipment installed before the order, subject to reliability and phased-compliance safeguards – materially expanding reach into the existing installed base.

Second, the covered entity standard has broadened. The 2020 order turned on "foreign adversary." The 2026 order uses "Covered Foreign Entity," defined to include countries or persons connected to a government subject to a US arms embargo or sanctions regime under ITAR, or that the secretary determines is engaged in conduct detrimental to US national security or foreign policy. This is broader in structure – embracing sanctions- and embargo-linked jurisdictions generally – and gives the secretary considerable discretion to designate additional countries or entities case by case.

Third, equipment coverage now expressly reaches grid modernization technology. The 2026 order's illustrative list calls out utility-scale and grid-connected inverters, battery energy storage systems, UPS systems supporting critical infrastructure, and associated software, firmware, digital services and remote-access capabilities – categories not covered by the 2020 order or its narrower Prohibition Order (which centered on transformers, circuit breakers and reactive power equipment at 69 kV and above).

The order also follows the Federal Communications Commission's (FCC) recent addition of foreign-produced power inverters to its Covered List. The FCC and DOE frameworks use different legal authorities and triggers; companies procuring or supplying inverters should conduct a parallel analysis rather than assuming compliance under one regime resolves the other.

Ambiguities and open interpretive questions

Several aspects of the EO are unresolved and will depend on DOE's implementing rules, due by December 24, 2026. We flag these because they bear directly on near-term considerations:

- **When is a transaction "initiated"?** The EO does not define this term, nor does it explain whether acquisition, importation, transfer and installation are separate transactions for timing purposes. It is unclear how the term applies to purchase orders placed but not yet performed before August 26, 2026, deliveries or payments under pre-existing master supply agreements, or change orders and amendments. This is especially important for equipment with multistage procurement: A contract may have been signed before August 26 while manufacturing, importation and installation occur afterward. Because the EO applies "notwithstanding any contract entered into or any license or permit granted prior to the date of this order," pre-existing contractual protections may not shield a transaction that DOE treats as "initiated" after the effective date. Companies should not assume a pre-August 26 contract places all subsequent performance steps outside the EO's reach.
- **Which countries and entities will be designated Covered Foreign Entities?** The definition combines an objective prong (countries subject to a US arms embargo or ITAR-referenced sanctions regime) with a discretionary prong (persons the secretary determines are engaged in conduct detrimental to US national security or foreign policy). Until DOE publishes designations, affected companies cannot be certain which suppliers, countries or ownership structures are covered – even though the underlying prohibition is already in effect.
- **How will DOE apply the "owned by, controlled by, or subject to the jurisdiction or direction of" standard?** This test is not further defined – no percentage ownership threshold, no guidance on indirect or minority ownership, joint ventures or contractual control. Several additional undefined concepts will determine practical reach: "critical component," "critical

infrastructure" for covered UPS systems, "foreign manufactured or operated" for existing equipment, and the degree of foreign component, software or service content sufficient to establish a Covered Foreign Entity nexus. These questions are particularly significant for minority investments, joint ventures, third-country subsidiaries, contract manufacturers, dual-sourced products, and equipment assembled domestically but reliant on foreign firmware or ongoing foreign technical support.

- **What does the pre-qualified vendor list process look like?** The EO allows, but does not require, the secretary to publish a pre-qualified list and expressly reserves authority to later regulate even pre-qualified equipment. It is unclear whether or when DOE will publish such a list, what certification process vendors would follow, and how much reliance companies can place on it given that reserved authority.

China-specific implications

The order does not name China in its operative text; "Covered Foreign Entity" is defined generically by reference to US arms embargo or sanctions status or through a case-by-case determination. However, China is expressly listed among countries subject to a policy of denial under ITAR section 126.1, the specific provision incorporated into the definition. On its face, this may reach beyond Chinese state-owned enterprises or companies on US sanctions and export-control lists, creating potential exposure for privately owned companies organized in China and certain subsidiaries, joint ventures, and suppliers whose relationship to China is jurisdictional rather than equity-based. Several additional features point to particular relevance for China-linked entities and supply chains.

Direct historical precedent targeting China

DOE's only prior implementing action under the 2020 order targeted equipment manufactured or supplied by persons owned by, controlled by or subject to the jurisdiction or direction of China, based on DOE's assessment that the Chinese government was "equipped and actively planning to undermine the electric power system in the United States." Companies should expect DOE to draw on this factual record when implementing the 2026 order, making Chinese-linked equipment and suppliers a likely early focus of forthcoming designations.

China-linked AI and grid-technology intersections

The order's threat rationale explicitly ties bulk-power system security to "advanced manufacturing, data centers, artificial intelligence, and defense production." Given the administration's broader scrutiny of Chinese involvement in AI infrastructure, DOE may initially focus on grid technologies with Chinese-origin software, cloud or remote-access components. Potential targets include grid-connected inverters, battery management software and remote-monitoring or predictive-maintenance platforms, particularly when integrated with AI-driven grid optimization or data center energy management.

Potential transaction restrictions

Because the prohibition reaches any transaction where a foreign country or national has any interest – including through a contractual interest in equipment supply – transactions with Chinese equipment manufacturers, joint venture partners or component suppliers initiated after August 26, 2026, are at risk of being deemed void or subject to unwinding if DOE later designates the relevant entity or country as a Covered Foreign Entity, notwithstanding any prior contract, license or permit. Companies with pending or planned procurement from Chinese-linked suppliers should treat this as an active transaction risk during the pre-implementation period.

Practical guidance and action steps

1. **Inventory pipeline transactions and the existing installed base**

Identify all pending, planned or recently initiated (on or after August 26, 2026) acquisitions, imports, transfers or installations of qualifying bulk-power system equipment, mapping each supplier's country of manufacture, ultimate ownership, and the origin of associated software, firmware, maintenance services and remote-access capabilities. In parallel, compile an inventory of currently installed equipment by manufacturer, country of origin and ownership/control chain so the company can quickly assess exposure if DOE designates a Covered Foreign Entity.

2. Build supply chain disclosure into contracts and do not assume pre-existing contracts provide protection

Update procurement templates and requests for proposals (RFPs) to require supplier certifications on country of manufacture, beneficial ownership, and origin of embedded software, firmware, remote access and maintenance services. New and amended contracts should address notification obligations, audit rights, product substitution and domestic sourcing rights, cooperation with DOE inquiries, and allocation of removal, replacement and delay costs. Because the EO applies “notwithstanding any contract entered into or any license or permit granted prior to the date of this order,” companies should not treat existing master supply agreements, purchase orders or long-term contracts as insulating a transaction from the prohibition.

3. Monitor DOE’s implementing rulemaking and vendor list developments

DOE’s rules are due by December 24, 2026, and will define Covered Foreign Entities, identify equipment warranting scrutiny and establish licensing procedures. Companies with material exposure should build a process to reassess procurement and vendor decisions promptly after publication. If DOE publishes a pre-qualified vendor list, treat qualification as an increasingly important procurement input – while recognizing that DOE retains authority to regulate even listed equipment or vendors.

4. Coordinate diligence across overlapping regimes

This order operates alongside the Committee on Foreign Investment in the United States (CFIUS), Federal Energy Regulatory Commission/North American Electric Reliability Corporation (FERC/NERC) supply chain standards, the FCC’s Covered List for foreign-produced power inverters, and other China-specific restrictions (such as foreign entity of concern rules for certain tax credits). Compliance under one regime does not resolve the others; companies should coordinate workstreams rather than treating them as independent silos.

5. Develop technical mitigations and incorporate the EO into deal diligence

For higher-risk equipment, evaluate whether remote access can be eliminated, firmware independently validated, networks segmented and maintenance localized. Transaction teams should assess potential DOE restrictions as part of regulatory, sanctions and supply chain diligence; purchase agreements and financing documents may need specific disclosure schedules, covenants, closing conditions, indemnities, and reserves for remediation or replacement.

6. Engage counsel before initiating higher-risk transactions

Given uncertainty around when a transaction is “initiated” and which entities will be designated Covered Foreign Entities, companies contemplating significant procurement of foreign-manufactured bulk-power system equipment – particularly equipment with any China nexus – should seek legal input before signing or performing the transaction.

Key Contacts

Brian E. Nelson Washington, DC	brian.nelson@cooley.com +1 202 728 7152
William K. Pao Los Angeles	wpao@cooley.com
Vince Sampson Washington, DC	vsampson@cooley.com +1 202 728 7140
Ziwei Xiao Palo Alto	zxiao@cooley.com +1 650 448 7628