

4.2104 Waivers.

(a) *Executive agencies.* The head of an executive agency may, on a one-time basis, waive the prohibition at 4.2102(a) with respect to a Government entity (*e.g.*, requirements office, contracting office) that requests such a waiver.

(1) *Waiver.* The waiver may be provided, for a period not to extend beyond August 13, 2021 for the prohibition at 4.2102(a)(1), or beyond August 13, 2022 for the prohibition at 4.2102(a)(2), if the Government official, on behalf of the entity, seeking the waiver submits to the head of the executive agency—

(i) A compelling justification for the additional time to implement the requirements under 4.2102(a), as determined by the head of the executive agency; and

(ii) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(2) *Executive agency waiver requirements for the prohibition at 4.2102(a)(2).* Before the head of an executive agency can grant a waiver to the prohibition at 4.2102(a)(2), the agency must—

(i) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy;

(ii) Establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Council (FASC) to facilitate interagency sharing of relevant acquisition supply chain risk information;

(iii) Notify and consult with the Office of the Director of National Intelligence (ODNI) on the waiver request using ODNI guidance, briefings, best practices, or direct inquiry, as appropriate; and

(iv) Notify the ODNI and the FASC 15 days prior to granting the waiver that it intends to grant the waiver.

(3) *Waivers for emergency acquisitions.*

(i) In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements under 4.2104(a)(2)(iii) and 4.2104(a)(2)(iv) to enable effective mission critical functions or emergency response and recovery.

(ii) In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must—

(A) Make a determination that the notice and consultation requirements are impracticable due to an emergency condition; and

(B) Within 30 days of award, notify the ODNI and the FASC of the waiver issued under emergency conditions in addition to the waiver notice to Congress under 4.2104(a)(4).

(4) *Waiver notice.*

(i) For waivers to the prohibition at 4.2102(a)(1), the head of the executive agency shall, not later than 30 days after approval—

(A) Submit in accordance with agency procedures to the appropriate congressional committees the full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and

(B) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(ii) For waivers to the prohibition at 4.2102(a)(2), the head of the executive agency shall, not later than 30 days after approval submit in accordance with agency procedures to the appropriate congressional committees—

(A) An attestation by the agency that granting of the waiver would not, to the agency's knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security;

(B) The full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain, to include a description of each category of covered technology equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after conducting a reasonable inquiry; and

(C) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(b) *Director of National Intelligence.* The Director of National Intelligence may provide a waiver if the Director determines the waiver is in the national security interests of the United States.

Parent topic: Subpart 4.21 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment