

# Securing the Federal Supply Chain: FASCSA Exclusion and Removal Orders

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# Introductions



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# Today's Agenda

- Background
  - Securing the Federal Supply Chain
  - Federal Acquisition Supply Chain Security Act (FASCSA)
- Purpose and Role of the Federal Acquisition Security Council (FASC)
- FASCSA Exclusion and Removal Orders FAR Interim Rule

# But first....

- “Federal Acquisition Supply Chain Security Act” or “FASCSA” = The Act
- “Federal Acquisition Security Council” or “FASC” = The Council
- “FASCSA Orders” = The Orders or The Exclusion or Removal Orders

## 1. Background:

- Securing the Federal Supply Chain
- Federal Acquisition Supply Chain Security Act

# Securing the Federal Supply Chain

- Information and Communications Technology Services (“ICTS”)
  - Any hardware, software, or other product or service . . . primarily intended to fulfill or enable the function of data processing, storage, retrieval, or communication by electronic means.
- Encompasses a broad array of technologies and services:
  - Internet systems
  - Wireless networks
  - Cellphones
  - Computers
  - Satellite Systems
  - Artificial Intelligence
  - Quantum Computing
  - Cloud Computing Services

# Securing the Federal Supply Chain

- Widespread reliance upon ICTS to connect and protect
- ICTS industry of critical importance to U.S. economic growth and national security
- COVID-19 pandemic supply chain disruptions
  - Significant shift from domestic manufacturing to Asia, China in particular
- Efforts to evaluate threats/vulnerabilities in ICTS supply chains historically ad hoc
- Congress adopted legislation in 2018 to improve executive branch coordination, supply chain information sharing, and actions to address supply chain risks
- Recent supply chain attacks
  - 2020 SolarWinds cyber attack

# Federal Acquisition Supply Chain Security Act of 2018 (FASCSA)

- Signed into law on December 21, 2018
- Designed to coordinate government efforts to protect the **ITC supply chain**
- Seeks to improve information sharing and coordinating actions to protect the supply chain
- Section 202 Established FASC interagency council
- Authorized FASC to issue rule to implement the requirements that govern the Council's operations



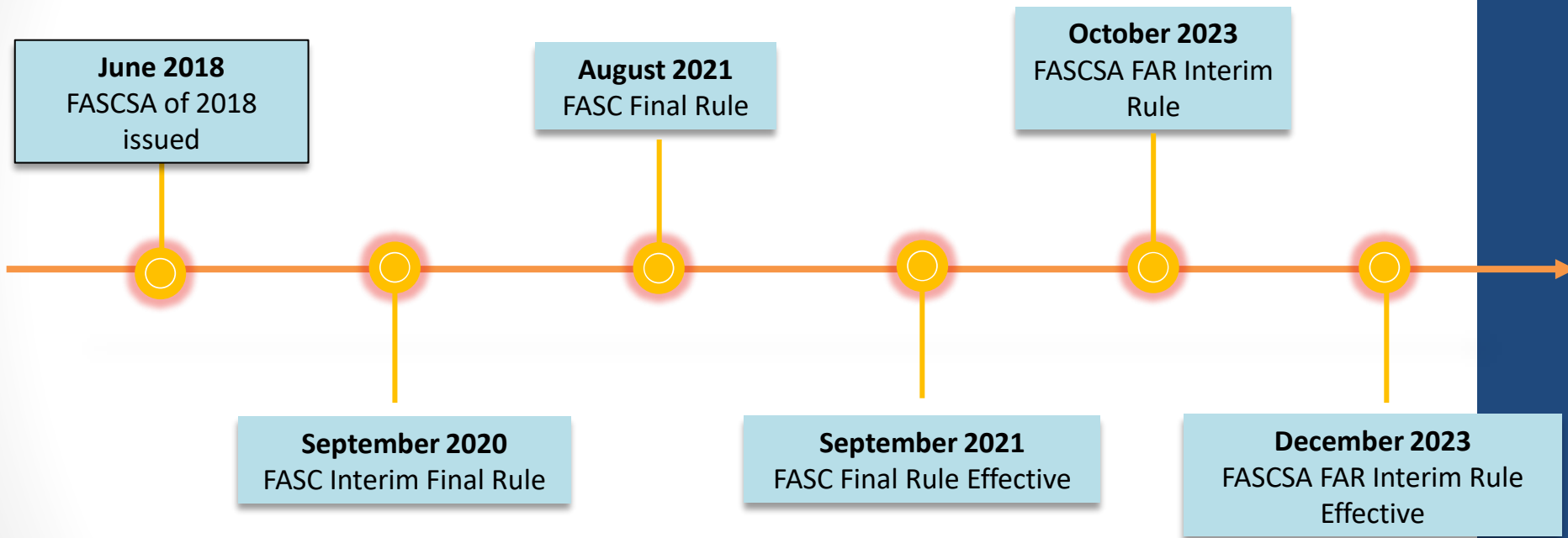
# FASC Interim Final Rule

- Effective September 1, 2020
- Comprised of three subparts:
  - Subpart A: Administration of FASC and its membership
  - Subpart B: established Cybersecurity and Infrastructure Security Agency (“CISA”) as the information sharing agency
  - **Subpart C: FASC procedures for removal and exclusion orders**
- Solicited public comments on the Interim Final Rule

# FASC Final Rule

- Published August 26, 2021, effective September 2021
- Adding new 41 C.F.R. Part 201-1
- FASC implemented minor revisions to interim final rule:
  - Reorganizes to conform to the structure of 41 C.F.R.
  - Clarifies terms
  - Adds general protections for the submission of information by non-federal entities

# FASCSA Implementation Timeline



## 2. Purpose and Role of the Federal Acquisition Security Council (FASC)

# FASC Purpose

- FASC established to address increased risk to federal **ICT** through the supply chain when infiltrated by hostile actors
- Strategic objectives:
  - Recommendations for **exclusion** and **removal** of ICT sources, goods, and services;
  - Ensure agencies have access to best practices for supply chain risk management functions
  - Create effective information sharing construct between federal agencies
  - Facilitate use of shared services and common contract solutions

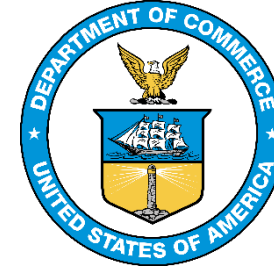
# FASC Composition



Office of Management and Budget



GSA

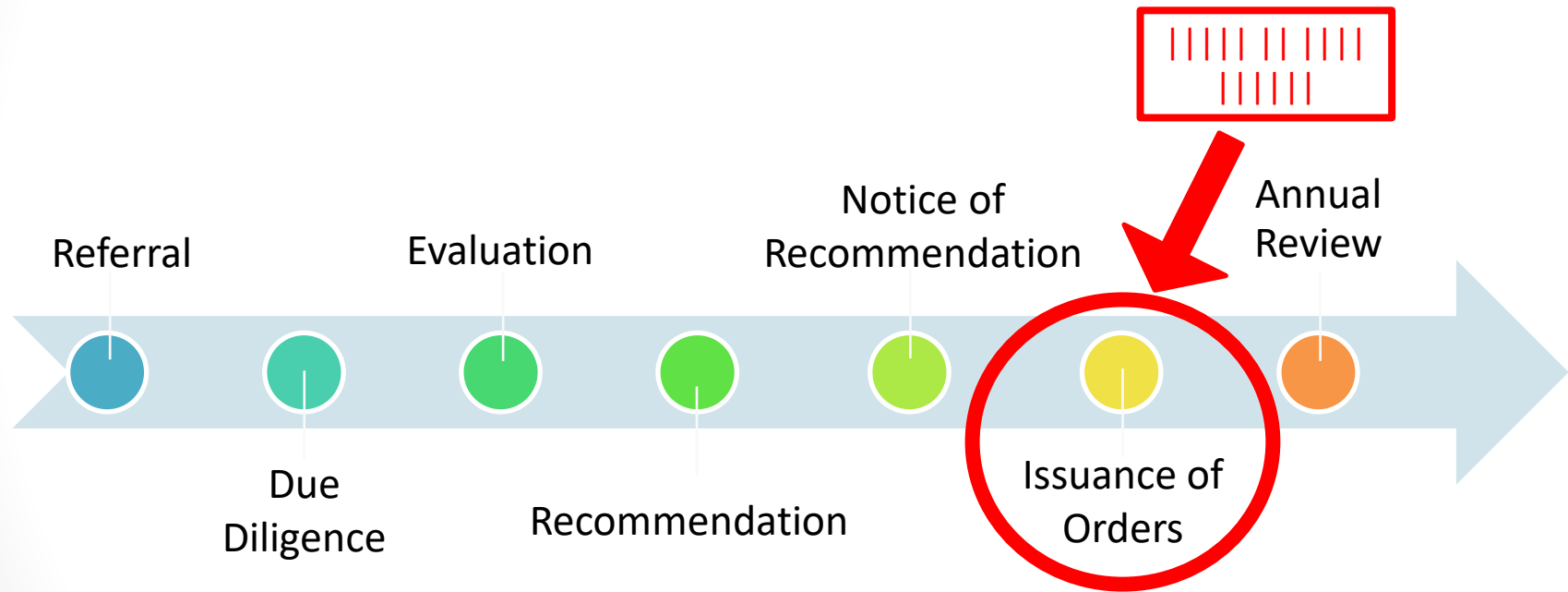


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# FASC Process

- 41 CFR 201-1, Subpart C – Exclusion and Removal Orders

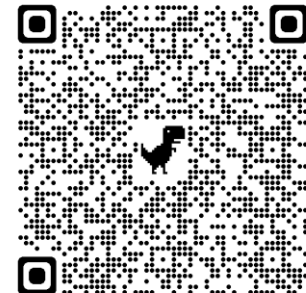


# 3. FASCSA Exclusion and Removal Orders FAR Interim Rule



# Interim FAR Rule

- “Implementation of the Federal Acquisition Supply Chains Security Act (FASCSA) Orders” Interim Rule
  - Published October 5, 2023
  - Effective December 4, 2023
  - Comments due February 2, 2024
- 3 New FAR Clauses
  - FAR 52.204-28
  - FAR 52.204-29
  - FAR 52.204-30



# New FAR Clauses

## FAR 52.204-29

- **Solicitation/representation**
- Reasonable inquiry into provision and use of products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order.

## FAR 52.204-28

- **FSS/GWAC/Multi-Agency**
- FASCSA orders will be identified in the request for quote or in the notice of intent to place an order.
- Required to remove from the basic contract any covered article or any product or service covered by an FASCSA Order.

## FAR 52.204-30

- **All contracts**
- Prohibits contractors from providing any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order.

# Key Takeaways

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- ✓ Applicable to All Contracts
- ✓ Compliance with FASCSA Exclusion & Removal Orders
- ✓ Quarterly SAM Reviews
- ✓ Continuous Reporting Obligations
- ✓ Representations
- ✓ Mandatory Flow Down

# FAR 52.204-30: Prohibition

(b) *Prohibition.* (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not **provide** or **use as part of the performance of the contract** any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

- Contractors prohibited from providing products/services to the USG when covered by a FASCSA Order.
- What does “part of the performance of the contract” mean?
  - “Use” ≠ Section 889 “Use”
  - “Use” ≠ TikTok “Use”
  - Use > Incidental (?)

# FAR 52.204-30: Prohibition

(b) *Prohibition.* (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any **covered article**, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

- Covered Article:
  - Information Technology (40 USC 11101), *including* cloud computing;
  - Telecommunications equipment/services (47 USC 153);
  - Processing information on Federal or non-Federal information system subject to the CUI Program;
  - Hardware, systems, devices, software, services that included embedded or incidental IT

# FAR 52.204-30: Prohibition

(b) *Prohibition.* (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any covered article, or any **products or services produced or provided by a source**, if the covered article or the source is prohibited by an applicable FASCSA orders as follows:

- FASCSA Orders may cover specific products/ services, or may broadly ban “sources” from the supply chain.
- Source:
  - a non-Federal supplier, or potential supplier, of products or services, at any tier.

# FAR 52.204-30: Applicable Orders

(b) *Prohibition.* (1) Unless an applicable waiver has been issued by the issuing official, Contractors shall not provide or use as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is prohibited by an **applicable FASCSA orders** as follows:

(i) For solicitations and contracts awarded by a **Department of Defense** contracting office, **DoD FASCSA orders** apply.

(ii) For **all other** solicitations and contracts **DHS FASCSA orders** apply.

- Different FASCSA Orders will govern different contracts.
- Focus of Subparagraph (b) on ***Exclusion Orders*** (?)

## Exclusion

Orders excluding sources  
or covered articles from  
procurements

VS

## Removal

Orders requiring removal  
of covered articles from  
information systems



# But....

*FASCSA order* means any of the following orders issued under the Federal Acquisition Supply Chain Security Act (FASCSA) requiring the **removal** of covered articles from executive agency information systems or the **exclusion** of one or more named sources or named covered articles from executive agency procurement actions, as described in [41 CFR 201–1.303\(d\)](#) and [\(e\)](#):

# Removal Orders

A removal order may require removal of the covered article(s) from an executive agency information system owned and operated by an agency; from **an information system operated by a contractor** on behalf of an agency; and from **other contractor information systems** to the extent that the removal order applies to contractor equipment or systems within the scope of “**information technology**,” as defined at herein.

41 C.F.R. 201.303(e)(2)

# Information Technology

1. Equipment or interconnected system or subsystem of equipment used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information
2. by the executive agency, or
3. by the contractor, if required by contract to
  - a) use the equipment, or
  - b) use the equipment to a **significant extent** in the performance of a service or the furnishing of a product.
4. Is *not* “equipment acquired by a federal contractor **incidental** to a federal contract.”

# FAR 52.204-30: Applicable Orders

(2) The Contractor shall search for the phrase “FASCSA order” in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSA orders identified in paragraph (b)(1).

**SAM.GOV**

The Official U.S. Government System for:

- Contract Opportunities**
- Contract Data**  
(Reports ONLY from fpds.gov)
- Wage Determinations**
- Federal Hierarchy**  
Departments and Subtiers
- Assistance Listings**
- Entity Information**  
Entities, Disaster Response Registry,  
Exclusions, and Responsibility/  
Qualification (was fapiis.gov)
- Entity Reporting**  
SCR and Bio-Preferred Reporting

Are you searching for Federal Acquisition Supply Chain Security Act (FASCSA) orders?

[View FASCSA Orders](#)

# FAR 52.204-30: Applicable Orders

(2) The Contractor shall search for the phrase “FASCSA order” in the System for Award Management (SAM) at <https://www.sam.gov> to locate applicable FASCSA orders identified in paragraph (b)(1).

(3) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the solicitation and resultant contract.

# FAR 52.204-30: Applicable Orders / Modifications

(4) A FASCSA order issued after the date of solicitation applies to this contract only if added by an amendment to the solicitation or modification to the contract (see FAR 4.2304(c)). However, see paragraph (c) of this clause.

- Generally suggests contractors must only comply with FASCSA Orders in effect at the time of contract award *unless* a modification is issued.
  - Bilateral vs. Unilateral
  - Timing?

# FAR 52.204-30: Waivers

(5)(i) If the contractor wishes to ask for a **waiver** of the requirements of a **new FASCSA order being applied through modification**, then the Contractor shall disclose the following:

(A) Name of the product or service provided to the Government;

(B) Name of the covered article or source subject to a FASCSA order; (C) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied or supplies the covered article or the product or service to the Offeror;

(D) Brand;

(E) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(F) Item description;

(G) Reason why the applicable covered article or the product or service is being provided or used;

- When new FASCSA Orders are applicable, contractors have the option to seek *waivers*.
- CO determines if waiver is “warranted” or to “instead pursue other appropriate action.”

# FAR 52.204-30: Reporting

(c) *Notice and reporting requirement.* (1) During contract performance, the Contractor shall review **SAM.gov** at least **once every three months**, or as advised by the Contracting Officer, to check for covered articles subject to FASCSA order(s), or for products or services produced by a source subject to FASCSA order(s) not currently identified under paragraph (b) of this clause.

(2) If the Contractor identifies a new FASCSA order(s) that **could impact their supply chain**, then the Contractor shall **conduct a reasonable inquiry** to identify whether a covered article or product or service produced or provided by a source subject to the FASCSA order(s) was provided to the Government or used during contract performance.

1. Obligations to quarterly review SAM.gov for new FASCSA Orders that may be applicable to products/services provided under existing contract.
2. Reasonable inquiry into whether covered products/services under new orders are currently in contract performance supply chain.



# FAR 52.204-30: Reporting

(3)(i) The Contractor shall **submit a report** to the contracting office as identified in paragraph (c)(3)(ii) of this clause, if the Contractor identifies, including through any notification by a subcontractor at any tier, that a covered article or product or service produced or provided by a **source was provided to the Government or used during contract performance** and is subject to a **FASCSA order(s) identified in paragraph (b)** of this clause, or a **new FASCSA order** identified in paragraph (c)(2) of this clause. For indefinite delivery contracts, the Contractor shall report to both the contracting office for the indefinite delivery contract and the contracting office for any affected order.

## 3. Report required when either:

- (a) Prime becomes aware that covered product/service was provided to the USG or used during performance; or
- (b) Prime becomes aware that product/service covered by a new FASCSA Order was provided to the USG or used during performance *regardless of whether the contract has been modified.*

# FAR 52.204-30: Reporting

- Reporting requirements *similar* to Section 889 Reporting:

## Initial Report

- 3 Business Days (*1 for 889*)
- Information re contract, product/service, source, brand, model no., description, any information re mitigation actions taken or recommended.

## Follow-Up Report

- 10 Business days
- Additional information re mitigation actions.
- Actions took to prevent submission and other efforts to be incorporated for future submission.

# FAR 52.204-30: Removal

(d) *Removal.* For **Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts or any other procurement instrument intended for use by multiple agencies**, upon notification from the Contracting Officer, during the performance of the contract, the Contractor shall promptly make any necessary changes or modifications **to remove any product or service produced or provided by a source that is subject to an applicable FASCSA order.**

- Removal ≠ Removal Orders
- Removal = Removal from base contract (e.g., GSA Schedule)

# FAR 52.204-30: Subcontractors

(e) *Subcontracts.* (1) The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (c)(1) of this clause, **in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products and commercial services.**

(2) The Government may identify in the solicitation additional FASCSA orders that are not in SAM, which are effective and apply to the contract and any subcontracts and other contractual instruments under the contract. The Contractor or higher-tier subcontractor shall notify their subcontractors, and suppliers under other contractual instruments, that the FASCSA orders in the solicitation that are not in SAM apply to the contract and all subcontracts.

- Mandatory flow down for *all* subcontracts.
- Prime and higher-tier contractors responsible for notifying subcontractors of applicable FASCSA Orders.

# Quick Note on Representations...

- FAR 52.204-29, Federal Acquisition Supply Chain Security Act Orders – Representation and Disclosures
- Offer submission = “conducted a reasonable inquiry”
- Further procedures allow an offeror to disclose where they cannot comply with a FASCSA order. The purpose for this disclosure is so that the Government may decide whether to pursue a waiver.

# 4. Conclusion

# Key Takeaways

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- ✓ Applicable to All Contracts
- ✓ Compliance with FASCSA Exclusion & Removal Orders
- ✓ Quarterly SAM Reviews
- ✓ Continuous Reporting Obligations
- ✓ Representations
- ✓ Mandatory Flow Down

# What's Next?

- Report on draft final FAR Rule due 4/10/2024
- 16 Comments Submitted – Mostly from Industry Groups

## Supply Chain Security Orders

Are you searching for Federal Acquisition Supply Chain Security Act (FASCSA) orders?  
Download them here.



There are currently no FASCSA orders in SAM.gov. The downloadable FASCSA orders file will be blank.

[Download FASCSA Orders](#)

*Last Updated: 12:00 AM*



# Questions?



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