
Technology Companies Affected by Government Responses to Terror Attacks

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The September 11 terrorist attacks have led to changes in several federal government policies affecting technology companies, and more changes are likely to come. Some of the recent developments are highlighted below.

Embargo List Expanded

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") administers U.S. trade and embargoes and maintains a list of persons and entities who are prohibited from transacting business with U.S. companies or transferring assets through the U.S. financial system. Following the September 11 attacks, OFAC updated this list to include persons and entities believed to be affiliated with Osama bin Laden's "al Qaeda" network.

OFAC has administered a comprehensive trade embargo against Taliban forces in Afghanistan since 1999, prohibiting virtually all imports, exports and other financial transactions. OFAC also administers similar trade embargoes against Cuba, Iran, Iraq, Libya and Sudan. There are narrow exceptions to these prohibitions, and transactions with these countries may be permitted in rare cases. Trade with North Korea and Syria is also restricted, but not prohibited outright. OFAC also prohibits new investment in Burma (Myanmar), restricts the diamond trade with Liberia and Sierra Leone and regulates some trade with Angola. OFAC regulations also prohibit trade with nationals of embargoed countries and entities established in embargoed countries, known terrorists and terrorist organizations and other persons and entities known to be affiliated with embargoed countries.

In order to avoid transactions with listed persons or entities, U.S. companies must screen their suppliers, customers and other business associates against OFAC's expanded list of prohibited countries, persons and entities.

India and Pakistan Export Controls Relaxed

On October 1, 2001, the U.S. Commerce Department lifted special export restrictions on India and Pakistan.

Exports of "dual-use" products and technologies with both civilian and military applications are regulated by the Commerce Department, while exports of specialized military products and technologies are separately controlled by the U.S. State Department. Commerce Department export controls vary according to the nature of the exported item, the country of destination, the intended end-use and, in some cases, the identity of the proposed recipient. Exporters are responsible for classifying all exported items and determining whether licensing is required. Licenses are always required for export transactions involving "Denied Persons"; "Prohibited Entities"; and parties known to be involved in prohibited activities such as the proliferation of missiles or nuclear, chemical, or biological weapons. Government guidelines outline "red flags" suggestive of an improper export transaction.

The U.S. imposed trade sanctions on India and Pakistan in 1998 after both countries tested nuclear weapons. Among those sanctions, the Commerce Department's export licensing requirements for India and Pakistan were tightened, and numerous governmental, military and private entities in those countries were barred from receiving U.S. exports. Under the newly-announced policy, more items can be exported to India and Pakistan without a license and license applications, where necessary, are more likely to be approved.

Foreign Nationals in the U.S. Remain Subject to Immigration and Export Control Rules

As in the past, foreign nationals employed in the U.S. must comply with immigration regulations as well as export controls applicable to the technologies with which they work. Hale and Dorr's recent [Immigration Advisory](#) details recent developments relating to immigration and visa issues. When visa holders are employed in the U.S., disclosures of sensitive technologies may be "deemed exports" subject to the same export licensing requirements that would apply if the technologies were actually sent to the employees' home countries.

National Security Concerns Influence Government Contracting Decisions

As a result of the current homeland defense and military mobilization, federal government agencies are permitted to exercise special rules in their purchases of supplies and services. Most significantly, national security needs may override the general requirement for competition in government contracting, so that some contracts may be awarded on a "sole-source" basis. In addition, the Defense Priorities and Allocations System may be invoked to require some government contractors to fill federal agency orders before filling more lucrative commercial orders that would otherwise be handled first. On October 1, 2001, Congress approved an extension of this extraordinary authority through Fiscal Year 2004. Congress has authorized spending to respond to the September 11 attacks and to support the related defense and security efforts, although it is not yet clear what additional supplies and services federal agencies will need to acquire from the private sector.

Caution Advised for International Travel

Although worldwide airline service has resumed since the attacks, the State Department "urges Americans to review their circumstances carefully and to take any measures they deem necessary to ensure their personal safety" and to "limit their movements" when traveling abroad.

SEC Facilitates Company Repurchases; Clarifies Rules Affecting Insiders

Many technology companies were also affected by the emergency closure of the U.S. equity markets from September 11, 2001 through September 14, 2001. The SEC has taken several actions designed to make it easier for companies to repurchase their own securities and to address other issues arising from that closure, including issuing interpretations relating to Section 16 (b), Rule 144 and Rule 10b5-1 that are of interest to company insiders. Click [here](#) to read a more detailed discussion of the SEC's emergency orders and the interpretations.

Laws Protect Jobs of Military Reservists

Federal and state laws require employers to protect the jobs and benefits of employees who may be ordered to report for military service. Key provisions of the federal Uniformed Services Employment and Reemployment Rights Act are summarized in a [Hale and Dorr Labor & Employment Bulletin](#).

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