



Anthropic AI & the Supply Chain Risk Designation: What Contractors Need to Know

July 23, 2026 | 12:00 – 1:00PM

Panelists:

- David Black, Partner, Holland & Knight LLP
- Amy Fuentes, Partner, Holland & Knight LLP
- Ann McRitchie, Associate, Holland & Knight LLP
- Marissa Serafino, Attorney, Holland & Knight LLP

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Today's Speakers



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- Co-Chair, National Government Contracts Team
- Trusted advisor, problem solver, and advocate for federal contractors and grant recipients in every stage of growth.
- Advises clients on government contracts and grants counseling and dispute resolution.
- Represents contractors in protests and claims and responding to government investigations, audits, False Claims Act investigations and litigations.
- Represents subcontractors in negotiating teaming agreements and subcontracts, and in disputes with prime contractors.

Today's Speakers



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- Partner, National Government Contracts Team
- Represents contractors in responding to stop work orders, agency terminations, requests for equitable adjustments, certified claims, and appeals to the board of contract appeals and the U.S. Court of Federal Claims.
- Advises clients on regulatory compliance matters including the FAR and DFARS, artificial intelligence and emerging technologies, and cybersecurity.
- Specializes in small business issues including size and status protests and appeals, affiliation analysis, mergers and acquisitions issues, and SBIR/STTR contracts.
- Serves as bid protest counsel before the GAO, U.S. Court of Federal Claims, and FAA ODRA.

Today's Speakers



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- Associate, National Government Contracts Team
- Advises clients on the full spectrum of federal procurement matters, including bid protests, claims, requests for equitable adjustments, and subcontracting and supply chain issues.
- Former in-house attorney with significant experience in identifying and mitigating False Claims Act risk, resolving disputes with the government, and responding to government investigations, audits, False Claims Act investigations and litigations.

Today's Speakers



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- Associate, Regulatory Group, Emerging Technology
- Advises companies, including government contractors, on privacy, cybersecurity, AI governance, and emerging technology compliance obligations across federal, state, and international regimes.
- Represents clients before Congress, federal agencies, and other policymakers on technology, national security, and data governance issues.
- Helps organizations anticipate and respond to policy changes involving AI governance, supply chain security, and critical technologies.

Agenda

- **Introductions**
- **Background on the DoD Designation**
- **Status of the Litigation and Injunction**
- **Updates from Capitol Hill**
- **Risk Mitigation and Compliance Steps**
- **Prime and Sub Obligations**

Background on the DoD Designation

Anthropic Dispute Timeline

- **2025** – Pentagon awards 4x \$200M contracts to AI companies, including Anthropic
 - General idea is to scale up the adoption of AI capabilities to support the warfighter and capitalize on strategic advantages
- **February 2026** – Dispute over Anthropic’s “acceptable use policy” became public. Two primary issues:
 - Mass domestic surveillance
 - Autonomous lethal weapons
- **Late February 2026** – Standoff, followed by social media proclamations



Donald J. Trump
@realDonaldTrump

THE UNITED STATES OF AMERICA WILL NEVER ALLOW A RADICAL LEFT, WOKE COMPANY TO DICTATE HOW OUR GREAT MILITARY FIGHTS AND WINS WARS! That decision belongs to YOUR COMMANDER-IN-CHIEF, and the tremendous leaders I appoint to run our Military.

The Leftwing nut jobs at Anthropic have made a DISASTROUS MISTAKE trying to STRONG-ARM the Department of War, and force them to obey their Terms of Service instead of our Constitution. Their selfishness is putting AMERICAN LIVES at risk, our Troops in danger, and our National Security in JEOPARDY.

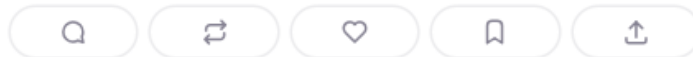
Therefore, I am directing EVERY Federal Agency in the United States Government to IMMEDIATELY CEASE all use of Anthropic's technology. We don't need it, we don't want it, and will not do business with them again! There will be a Six Month phase out period for Agencies like the Department of War who are using Anthropic's products, at various levels. Anthropic better get their act together, and be helpful during this phase out period, or I will use the Full Power of the Presidency to make them comply, with major civil and criminal consequences to follow.

WE will decide the fate of our Country — NOT some out-of-control, Radical Left AI company run by people who have no idea what the real World is all about. Thank you for your attention to this matter. MAKE AMERICA GREAT AGAIN!

PRESIDENT DONALD J. TRUMP

13.9k ReTruths 57.4k Likes

Feb 27, 2026, 3:47 PM



Secretary of War Pete Hegseth
@SecWar

This week, Anthropic delivered a master class in arrogance and betrayal as well as a textbook case of how not to do business with the United States Government or the Pentagon.

Our position has never wavered and will never waver: the Department of War must have full, unrestricted access to Anthropic's models for every LAWFUL purpose in defense of the Republic.

Instead, @AnthropicAI and its CEO @DarioAmodei, have chosen duplicity. Cloaked in the sanctimonious rhetoric of "effective altruism," they have attempted to strong-arm the United States military into submission - a cowardly act of corporate virtue-signaling that places Silicon Valley ideology above American lives.

The Terms of Service of Anthropic's defective altruism will never outweigh the safety, the readiness, or the lives of American troops on the battlefield.

Their true objective is unmistakable: to seize veto power over the operational decisions of the United States military. That is unacceptable.

As President Trump stated on Truth Social, the Commander-in-Chief and the American people alone will determine the destiny of our armed forces, not unelected tech executives.

Anthropic's stance is fundamentally incompatible with American principles. Their relationship with the United States Armed Forces and the Federal Government has therefore been permanently altered.

In conjunction with the President's directive for the Federal Government to cease all use of Anthropic's technology, I am directing the Department of War to designate Anthropic a Supply-Chain Risk to National Security. Effective immediately, no contractor, supplier, or partner that does business with the United States military may conduct any commercial activity with Anthropic. Anthropic will continue to provide the Department of War its services for a period of no more than six months to allow for a seamless transition to a better and more patriotic service.

America's warfighters will never be held hostage by the ideological whims of Big Tech. This decision is final.

10:14 PM · Feb 27, 2026 · 13.3M Views



Read 10.2K replies

Anthropic Dispute Timeline (con't)

- **March 2026** – Secretary Hegseth sends Anthropic two formal notices:
 1. “Supply chain risk” designation under 41 U.S.C. § 4713, which authorizes designations under the Federal Acquisition Supply Chain Security Act
 1. “Supply chain risk” designation under 10 U.S.C. § 3252, which provides authority for DoW supply chain risk designations

Background Timeline

How a contract dispute became a national security designation



Key context: On Feb 28, 2026, OpenAI announced a parallel Pentagon contract with substantively similar restrictions (no mass surveillance, no autonomous weapons) -- raising disparate-treatment and pretext questions.

41 U.S.C. § 4713

- Federal Acquisition Supply Chain Security Act empowers the Government to exclude sources from certain federal procurements
 - FAR 52.204-29; 52.204-30 → Generally prohibits the use of any covered article or source prohibited by an FASCSA order in contract performance
 - Contemplates contract modifications to incorporate new orders for existing contracts
 - Must check SAM and solicitation requirements.



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Supply Chain Security Orders

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

Download them here.



Please select the 'download FASCSA Orders' to view the active list. This is refreshed daily with the most recent data.

Download FASCSA Orders

Last Updated: Today at 12:00 AM

10 U.S.C. § 3252

- Empowers DoW to exclude a source from federal procurements for certain “covered systems” to reduce “supply chain risk”
 - Supply Chain Risk is defined as a “risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.”
- **DFAR 252.239-7017** → Solicitation provision notifying offerors that the Government may exercise authority under § 3252
- **DFAR 252.239-7018** → Contract clause requiring contractors to “mitigate supply chain risk in the provision of supplies and services to the Government”

Status of the Litigation & Injunction

3

Federal Courts
One Dispute

The Three Challenged Actions

February 27 - March 3, 2026 | Three legally distinct actions, three review tracks

1

Presidential Directive

Feb 27, 3:47pm ET

Trump posts on Truth Social directing every federal agency to "immediately cease all use of Anthropic's technology." Cites no statutory authority.

2

Hegseth Directive ("Blacklist")

Feb 27, ~1 hour later

Hegseth posts on X designating Anthropic a supply-chain risk and declaring no contractor may conduct commercial activity with Anthropic. Government later conceded no statute authorizes this.

3

Formal Designations (March 3)

March 3, 2026

(a) 10 U.S.C. §3252 determination -- reviewed in N.D. Cal.
(b) FASCSA / 41 U.S.C. §4713 letter -- direct review in D.C. Circuit under §1327.

Review: § 3252 + Presidential/Hegseth Directives in N.D. Cal. | FASCSA § 4713 in D.C. Circuit

N.D. Cal. Preliminary Injunction

March 26, 2026 | Judge Rita F. Lin | 43-page opinion (Dkt. 134/135)

Three Independent Grounds for Likelihood of Success:

APA (Arbitrary & Capricious)

- §3252 targets covert sabotage -- not an open negotiating posture
- No evidence Anthropic can alter/stop Claude post-deployment
- Wrong official conducted risk assessment (also the contract negotiator)
- Record evidence of pretext (cordial email contradicts)

First Amendment Retaliation

- CEO's Jan 2026 essay and Feb 26 statement = protected speech
- Govt's own words supply causal nexus ("arrogance," "RADICAL LEFT")
- Same restrictions existed 1+ year without being treated as risky

Procedural Due Process

- Protected liberty interest in contracting eligibility/reputation
- No pre-deprivation notice given
- Claimed "exigency" contradicted by record (1+ year under same terms)

Injunction: Stays all 3 Challenged Actions under 5 U.S.C. §705 | Status quo restored as of Feb 27 | \$100 bond

What the Injunction Does & Does Not Protect

Critical distinction for contractor compliance

CURRENTLY ENJOINED (N.D. Cal.)

- Presidential Directive (Truth Social post)
- Hegseth Directive / "blacklist"
- 10 U.S.C. §3252 Designation
- Status quo as of Feb 27, 2026 restored
- Government may not enforce these three actions

NOT ENJOINED / LIVE RISKS

- FASCSA §4713 designation remains in effect
(D.C. Circuit denied emergency stay April 20)
- Government publicly states designation is "in full force and effect"
- No agency is required to use Claude
- Contractor compliance obligations under §4713 remain uncertain

Bottom line: The N.D. Cal. injunction helps, but the separate FASCSA designation creates ongoing uncertainty.

D.C. Circuit: FASCSA Track

No. 26-1049 (lead) / 26-1162 (consolidated) | Panel: Henderson, Katsas, Rao

●	Mar 11	Anthropic moves for emergency stay
●	Apr 20	Stay DENIED (per curiam: Wilkins/Katsas/Rao)
●	May 19	Oral argument on 3 pre-ordered issues
●	Jun 4	Government's "June Decision" reaffirms designation
●	Jul 6	Anthropic files Second Supplemental Brief
●	Pending	Decision remains pending (as of Jul 20, 2026)

Three Pre-Ordered Issues

- (a) Does §1327 give jurisdiction over a "covered procurement action"?
- (b) Does the determination/notice "direct or take" such action?
- (c) Does Anthropic have any capability to affect Claude's functioning after delivery?

The Jurisdictional Fight

Is this a reviewable "covered procurement action"?

Government's Position

The FASCSA designation is not a "covered procurement action" under §1327 -- it's merely a determination, not an actual procurement decision. Therefore the D.C. Circuit lacks jurisdiction to review it.

Why It Likely Fails

The D.C. Circuit's own April 20 per curiam order acknowledged that the government canceled contracts and barred Anthropic as a subcontractor -- those ARE covered procurement actions.

Record Evidence Undercutting the Government:

- D.C. Circuit per curiam: "the Department has canceled its contracts with Anthropic... and prohibited its other contractors from using Anthropic as a subcontractor"
- Emil Michael declaration confirmed removal/exclusion process "has been initiated"
- Even if no CPA occurred yet, the Determination "directs" such actions -- independently triggering review (amici: Industry Trade Associations, etc.)

The "June Decision" & Supplemental Briefing

"A Designation in Search of a Rationale"

Apr 17 Anthropic sends DoW letter w/ declarations showing NO technical ability to alter Claude post-deployment; requests rescission

Jun 4 Government issues "June Decision" -- 4 paragraphs reaffirming designation without addressing the evidence; disavows own original rationale

Jul 6 Anthropic files Second Supplemental Brief arguing the shifting rationales confirm pretext

Anthropic's Key Arguments

- (i) Post-hoc process cannot cure a statutory/due-process violation already complete at the time of the original designation
- (ii) The record has not changed -- same pretext evidence, same underlying facts
- (iii) Shifting rationales are themselves "probative of pretext" -- the govt disavowed its core theory (post-deployment access) without admitting error, then substituted unfalsifiable "loss of trust" framing

Now captioned: No. 26-1049 (lead); No. 26-1162 (consolidated) | Decision PENDING as of July 20, 2026

N.D. Cal. Merits & Ninth Circuit

9th Circuit (No. 26-2011)

Status: **STAYED**

- Govt's appeal of the PI
- Stayed Apr 27 pending D.C. Cir. resolution
- Govt must move within 21 days of D.C. Cir. decision

N.D. Cal. Summary Judgment Track

- Cross-MSJ schedule set April 23 (Dkt. 150)
- Anthropic MSJ filed June 10; Govt cross-MSJ June 24
- Reply briefing completed July 15
- Hearing set: July 30, 2026 (Courtroom 15/4, Judge Lin)

SIGNIFICANT DEVELOPMENT: July 20, 2026

Judge Lin ordered Anthropic to file a proposed order by July 24, 2026, addressing the relief it seeks on its Motion for Summary Judgment -- separately for its constitutional claims and its APA claims.

Why this matters:

- Courts do not ask for proposed orders unless they are prepared to rule in the movant's favor
- Separating constitutional from APA relief suggests the court may grant on both tracks
- This came just two days ago -- the situation is actively moving

What to Expect Next

Upcoming Dates



Any day	D.C. Circuit decision (pending since Jul 6 brief)
Jul 24	Anthropic proposed order on relief due (N.D. Cal.)
Jul 30	MSJ hearing, 10am, Courtroom 15/4 (N.D. Cal.)
Post-D.C. Cir.	9th Cir. reactivates (govt has 21 days to move)

Contractor Takeaways

- Monitor OpenAI's parallel restrictions (pretext signal)
- Track which statutory basis drives your CO's guidance
- Commercial-terms dispute recast as "supply chain risk" despite no technical capability

Three D.C. Circuit Outcomes

- 1. Rules for Anthropic on merits**
Confirms N.D. Cal. holding; 9th Cir. affirmance of PI more likely; strongest contractor clarity
- 2. Dismisses for lack of jurisdiction**
Pushes dispute exclusively to N.D. Cal. (where §3252 designation already enjoined); less immediate clarity on §4713
- 3. Rules for government on merits**
Creates circuit-level conflict with N.D. Cal. PI rationale; likely headed to Supreme Court; maximum contractor uncertainty

Legislative & Policy Updates from Capitol Hill

The Ripple Effect



- *Questions Raised:* Who should be making decisions about DoW's use of AI, autonomous weapons systems, and surveillance? What protections are in place? Do we have adequate security?
- *Prompting Oversight:* Sens. Warren and Markey and Reps. Whitesides, Llicardo, and Houlahan and many more lawmakers issued statements or sent letters to Secretary Hegseth questioning following the supply chain designation about their concerns.
- *Education:* Members are requesting meetings about security related to leading LLMs (e.g. Mythos/Fable, etc.)

The Ripple Effect (cont.)

- **Legislation:**

- House Defense Appropriations:

- “The Committee affirms that decisions involving lethal force must remain under meaningful human judgment and control, consistent with the law of war and established Department of Defense policies. The Committee recognizes that national security applications of AI differ significantly from consumer uses, requiring exceptional speed, robust handling of classified data, and resilience against adversarial attacks. Accordingly, these applications must incorporate strong protections for accountability, oversight, and safety while avoiding overly burdensome regulations that could hinder innovation and slow the deployment of critical capabilities.”

- Standalone Bills: Slotkin AI Guardrails Act; Wyden Government Surveillance Reform Act

- NDAA

- **What to Expect?** Congress will continue examining whether the government is using AI tools appropriately and whether AI tools used by contractors should be subject to disclosure, certification, testing, and subcontractor flow down requirements.

- E.g., Sen. Warner released an AI package including a security bill

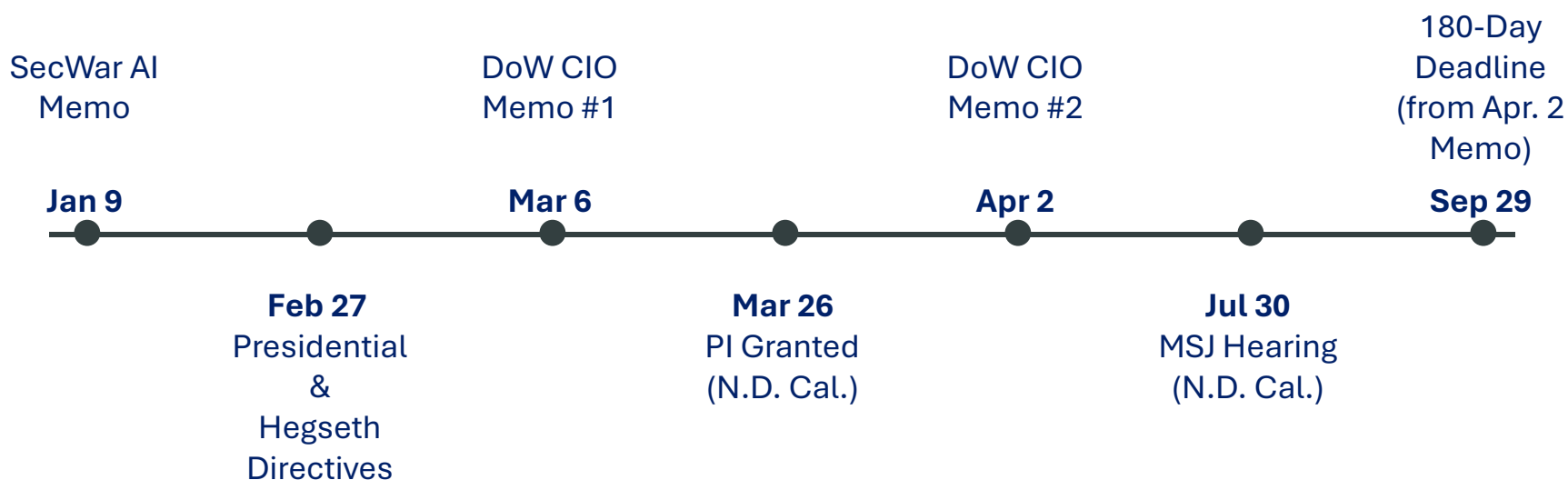
Larger Trends

- USG is increasing its control over technology
 - Anthropic export controls
 - Defense Supply Chain Mapping Executive Order (July 2026)
 - EO on Voluntary testing of LLMs (June 2026)
 - Mythos and Fable; OpenAI models launch cyberattack (July 2026)
 - OMB M-25-21: Minimum risk management practices for High-Impact AI for contractors (April 2025)



Risk Mitigation and Compliance Steps

Key Chronology: Memos, Litigation & Deadlines



Key: PI = Preliminary Injunction (enjoining Presidential Directive, Hegseth Directive, and §3252 Designation) | MSJ = Cross-Motions for Summary Judgment | DoW CIO Memo #2 supersedes Memo #1 and issued same day PI administrative stay expired

What the Directives Actually Require

01	180-Day Removal	Discontinue ALL Anthropic products across DoW systems by ~Sept 29, 2026; prioritize national security & NC3 systems.
02	30-Day CO Notification	Contracting officers must notify contractors within 30 days of memo (i.e., ~May 2 under Apr 2 memo).
03	Written Compliance Certification	All DIB entities must represent full compliance in writing to their CO no later than the 180-day deadline.
04	Incorporation into Contracts	"Shall incorporate this restriction into all current and future contracts" — applies to all DIB contracts.
05	No Waivers	Only the DoW CIO may grant rare/extraordinary temporary exemptions for mission-critical activities with no viable alternative.

Primary Source: March 6, 2026 DoW CIO Memo (Internal)

Addressed to Senior Pentagon Leadership, Combatant Commanders, Defense Agencies



CHIEF INFORMATION OFFICER

DEPARTMENT OF WAR
6000 Defense Pentagon
Washington, D.C. 20301-6000

MAR 06 2026

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

Subject: Removal of Anthropic, PBC Products in DoW Systems

References: (a) 10 United States Code (U.S.C.) § 3252
(b) Defense Federal Acquisition Regulations (DFAR) Subpart 239.73
(c) DoDI 3020.45, Mission Assurance Construct, August 14, 2018, as amended
(d) DoDI 3741.0, National Leadership Command Capabilities (NLCC) Configuration Management (CM), May 1, 2013, as amended
(e) DoDD 3020.26, DoD Continuity Programs, June 4, 2024
(f) National Defense Authorization Act for 2018, Section 1659, Evaluation and Enhanced Security of Supply Chain for Nuclear Command, Control, and Communications and Continuity of Government Programs
(g) Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain
(h) DoDI 8500.0, Cybersecurity, March 14, 2014, as amended
(i) DoDD 5144.02, DoD Chief Information Officer (DoD CIO), November 21, 2014
(j) DoDM 8530.0, Cybersecurity Activities Support Procedures, May 31, 2023
(k) Joint Capability Integration and Development System (JCIDS) Cyber Survivability Endorsement Implementation Guide, V3.0, July 2022
(l) 44 U.S.C. § 3554, Federal agency responsibilities
(m) 40 U.S.C. § 11331, Responsibility for acquisitions of information technology
(n) 41 U.S.C. § 4713, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information

Information and communications technology (ICT) is essential to the daily operations and functionality of the Department of War (DoW) and facilitates DoW's ability to conduct business and execute its mission. Existing and emerging threats to weapon and information systems are often directly linked to the ICT supply chain. Adversaries can exploit vulnerabilities tied to hardware, software, and managed services from primary and third-party vendors, suppliers, and service providers. Successful exploitation of ICT supply chain vulnerabilities can lead to asymmetric adversary advantages, significant detriment to DoW critical systems (references a through d), and potentially catastrophic risks to the warfighter (references g and h). The DoW Chief Information Officer (CIO), in compliance with the authorities granted by references (g) through (n), has determined that the use of Anthropic, PBC, and its subordinate, subsidiaries, or affiliated offices or entities, doing business under various names, and all

subsidiaries, successors, or assigns thereof (Covered Company) products presents an unacceptable supply chain risk for use in all DoW systems and networks.

DoW Components will discontinue all use of the Covered Company's products across all DoW systems within 180 days. This action must be prioritized for systems supporting critical missions, including but not limited to:

- National security systems (NSS), strategic priorities, and nuclear weapons
- Nuclear command, control, and communications
- Continuity of government
- Ballistic missile defense (references a-f)
- Warfighting capabilities at high-risk cyber survivability levels (Categories 3-5), per reference (k)

DoW Components will remove the Covered Company's products from all DoW systems and networks, including government-furnished end-user devices such as desktops, laptops, and mobile devices, as soon as practical or through leveraging established technical refresh cycles. However, all products covered by this memorandum must be removed within 180 days from the date of this memorandum. To ensure continuity of operations during the migration, Components are authorized to procure temporary licenses and support tokens as required. All such procurements must be tied to an approved transition plan and are limited to the 180-day period defined in this memorandum.

Furthermore, Components must remove the Covered Company's products from all Component Approved Products Lists, Service Provider Equipment Lists, e-Commerce markets, and other similar functions that facilitate the procurement of IT hardware, software, and services, as these products are no longer authorized for installation in DoW systems and networks.

This memorandum directs the phased removal of all products and services from the Covered Company from the DoW enterprise. All DoW Components and Defense Industrial Base (DIB) partners must achieve full compliance within 180 days of this memorandum's date. As directed by the Under Secretary of War for Acquisition and Sustainment (USD(A&S)), this prohibition applies to all DIB contracts. Accordingly, DoW Components shall incorporate this restriction into all current and future contracts. Contracting officers shall notify contractors of this requirement within 30 days, and all DIB entities must represent their full compliance in writing to their contracting officer no later than the 180-day deadline.

While this memorandum prohibits waivers, the DoW CIO is the sole authority for granting temporary exemptions in rare and extraordinary circumstances. Exemptions will only be considered for mission-critical activities directly supporting national security operations where no viable alternative exists, and the requesting Component must submit a comprehensive risk mitigation plan for approval.

Kirsten A. Davies

Received: Exec Svcs
9 MAR 26 (SCB)

2

April 2, 2026 Superseding Memo: What Changed?



CHIEF INFORMATION OFFICER

DEPARTMENT OF WAR
6000 Defense Pentagon
Washington, D.C. 20301-6000

Apr 02 2026

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOW FIELD ACTIVITY DIRECTORS

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(m) 41 U.S.C. § 4713, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information

This memorandum supersedes all previous DoW CIO memorandums of the same subject.
Disclosure of Certain Information

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Key Differences from March 6 Memo:

1. Express Supersession Clause

"This memorandum supersedes all previous DoW CIO memorandums of the same subject."

2. New Recital Citing SecWar Memo

Issued "in alignment with the Secretary of War's issued memorandum dated January 9, 2026, entitled 'Accelerating America's Military AI Dominance.'"

3. The April 2 memo no longer includes mention of Anthropic being "an unacceptable supply chain risk."

4. Otherwise Near-Identical

Same 180-day removal mandate, 30-day CO notification, written compliance representation, no-waiver provision.

Critical Timing:

Issued same day the PI's 7-day administrative stay expired (Apr 2) — and same day govt noticed its 9th Cir. appeal.

From Memo to Contract: FAR 52.204-30

- **For DoW Contracts:** Contractors must comply with **DoW FASCSA Orders listed in SAM** when a Solicitation was issued or **additional DoW FASCSA not in SAM but identified in the Solicitation.**
- “A FASCSA order **issued after the date of solicitation** applies to this contract **only if added by** amendment to the solicitation or **modification to the contract.**” FAR 52.204-30(b)(4).
 - **Incorporation of new FASCSA Orders:** If Government modifies prime contract, then **subcontracts must also be modified.**
- **Quarterly review** of SAM or **as advised by the KO:** check for products and services covered by FASCSA orders
- “**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 product or service] was provided to the Government or used during contract performance.”
- “**Reasonable Inquiry**” is “designed to uncover any information in the entity’s possession” about the identity of any covered products or services. Not an internal or third-party audit.
- **Contractor shall submit a report** if a covered product or services “was provided to the government or used during contract performance.”

The Mandatory Compliance Notification Form

Microsoft Forms certification being sent alongside April 2 memo



Questions asked:

Company and Contact Information

1. Company Name
2. UEI
3. Applicable Contract/Agreement Nos. with the following instruction: "please list all contract or agreement numbers to which this certification applies. Separate multiple numbers with a comma."

Point of Contact Information

1. Full Name
2. Title
3. Email Address
4. Phone Number

Administrative fields (Company, UEI, Contracts, POC)

The Mandatory Compliance Notification Form (continued)

Microsoft Forms certification being sent alongside April 2 memo

Compliance Certification

8. Did your company utilize any Anthropic, PBC products or services in the performance of the listed contract(s) prior to the removal directive? *

Enter your answer

9. Current Anthropic Usage Status *

Instruction: Please select the option that best describes your current status regarding Anthropic, PBC products and services on the referenced contract(s).

☐ (In Progress - Mod Required): We are in the process of removing Anthropic products, but require a contract modification (e.g., cost or schedule impact) to achieve full compliance.

☐ (In Progress - No Mod Needed): We are currently in the process of removing Anthropic products. We will be compliant by 01 SEP 2026 and do not require a contract modification.

☐ (Fully Compliant): We previously used Anthropic products, but they have been completely removed.

☐ (No Impact): We do not use and have not used Anthropic products. (Branch to end of form)

Back Submit

Substantive certification question with four response options (incl. "Mod Required")

The Certification: What It Asks & Risks

Form Requires:

- Company name + UEI
- All applicable contract/agreement numbers
- Point-of-contact (name, title, email, phone)
- **Core certification: Did you use Anthropic products?**

Four Response Options:

- (a) In Progress – Mod Required
- (b) In Progress – No Mod Needed
- (c) Fully Compliant
- (d) No Impact (never used Anthropic)

Risk of Over-Certifying

- False Claims Act exposure if certification proves inaccurate
- Waiver of REA / equitable adjustment rights
- Overbroad representations beyond contract scope

Risk of Under-Certifying

- Potential contract default / non-compliance finding
- Strained CO relationship if seen as obstructing
- Adverse inference if litigation resolves in gov't favor

Two Possible Approaches: Side-by-Side

Approach A: Aggressive Compliance

- Treat April 2 memo at face value
- Complete certification form promptly
- Begin removal/transition per 180-day deadline
- Represent compliance notwithstanding pending litigation

Rationale:

Minimize risk of non-compliance finding; maintain CO relationship; hedge against government prevailing on appeal

Approach B: Cabined / Reservation of Rights

- Respond to request, but not as "required certification"
- Do NOT remove/exclude products until bilateral or unilateral contract mod
- Preserve REA rights for cost/schedule impacts
- CO lacks unilateral authority to demand this breadth of info without mod — respond narrowly

Rationale:

Protect contract rights; PI undermines legal basis; don't incur removal costs that may be unnecessary

Should You Certify Without a Contract Mod?

The threshold question for contractors who have not received a modification

The Argument Against (Approach B):

- The memo is an internal agency directive to COs, not itself a bilateral or unilateral contract modification
- Memo says restriction "shall be incorporated" into contracts — future tense; until incorporation via mod (bilateral agreement or unilateral change order), specific contract may not yet impose a binding obligation
- COs must "notify" contractors within 30 days — notification is not the same as a contract action
- Form option (a) itself acknowledges some contractors need a mod — linking certification to the mod process

Risk Calculus:

Certifying before a mod risks:

- (i) Creating a representation the gov't could later rely on (FCA exposure if inaccurate)
- (ii) Undermining the position that removal costs are only required following a mod — the trigger for REA rights

NOT certifying risks:

- (i) CO escalation, adverse performance evaluation
- (ii) Disputes about contractor cooperation / responsiveness
- (iii) Adverse inference if gov't prevails in litigation

Certification Response: A Spectrum of Options

A business and legal risk judgment call — not a one-size-fits-all answer

A Full Substantive Certification
Complete all fields including the usage-status question. Select the applicable option (a)-(d). Accept the risk of creating a binding representation.

B Cabined / Qualified Response
Complete objective/admin fields (company, UEI, contracts, POC). Respond to the usage question with a qualified statement: reserve rights, ask CO to identify specific clause or mod authorizing the request, state removal will be addressed through the standard mod/REA process.

C Decline Form; Send RoR Letter
Do not complete the form. Instead, send a written acknowledgment/reservation-of-rights letter noting receipt, the litigation status, and the absence of a contractual basis for the certification demand.

Decision requires internal escalation to legal/contracts before any response. Factor in: contract-specific clause analysis, REA posture, CO relationship, and litigation posture.

Documentation & Recordkeeping Best Practices

Build the record now — regardless of which approach you choose

- **Preserve all CO communications**
Memo, certification form, emails, Teams messages — all with dates received.
- **Confirm flow-down / mod status**
Is the restriction actually incorporated into THIS contract? Don't assume — verify.
- **Document the decision**
Memorialize which advisory approach (A or B) and why. Attorney-client privilege as appropriate.
- **Track costs / schedule impacts**
Any removal-related costs or delays must be documented contemporaneously for REA/claim support.
- **Internal escalation record**
Legal/compliance must sign off before any PM or contract admin signs a certification.
- **Monitor litigation docket**
Jul 30 hearing and D.C. Cir. decision could change the compliance landscape overnight.

Communicating with Contracting Officers

Practical guidance for the initial response

Acknowledge Receipt Promptly

Don't ignore the CO. Respond in writing confirming receipt and noting the request is under review by counsel.

Respond in Writing Only

Never make verbal certifications. All responses should be written, dated, signed by authorized representative, and preserved.

Include Reservation-of-Rights Language

Expressly reserve all contract rights, including REA/equitable adjustment, and note the directive's legal status is in litigation.

Scope Your Response Narrowly

Address only the specific contract(s) referenced. Do not volunteer information about other contracts, subcontracts, or commercial relationships.

Contract Modification & REA Considerations

Key Principles

- Directive must be incorporated via contract modification before it's contractually binding on the contractor
- Unilateral direction to change scope/performance = constructive change entitling contractor to REA
- Cost/schedule impacts from product removal are compensable under standard Changes and Equitable Adjustment clauses
- Certification form option (a) expressly contemplates that a mod is required — document this if you select it
- **Do NOT begin incurring removal costs without first preserving your claim/REA rights in writing**

Practical Steps

1. Review contract for existing supply-chain or cybersecurity clauses (DFARS 239.73)
2. Determine if CO has issued (or plans to issue) a formal modification
3. If mod issued, assess cost/schedule impacts and submit REA within applicable timeframes
4. If no mod, respond to CO noting absence of contractual basis and reserve rights
5. For primes: evaluate sub-tier flow-down obligations and potential sub REAs

Dates to Calendar: Near-Term Milestones

Jul 30, 2026

N.D. Cal. Cross-MSJ Hearing (Judge Lin)

Most consequential near-term event. Could resolve merits or signal how court views the April 2 reissuance.

Pending

D.C. Circuit Decision (FASCSA Petition)

"Load-bearing event" — could push dispute to N.D. Cal., create circuit split, or confirm PI.

~Aug 18, 2026

21-Day Deadline to Lift 9th Cir. Stay

After D.C. Cir. rules, parties have 21 days to ask 9th Cir. to lift the stay of its appeal.

Sep 29, 2026

180-Day Contractor Compliance Deadline

Written compliance representation due to CO per both April 2, 2026 memo. Plan response strategy well in advance.

Recommendation: Build decision points at each milestone.

Prime and Subcontractor Obligations

Some Subcontractor & CSP Considerations

Privity Question:

A subcontractor/CSP typically lacks direct contractual privity with the government. If a CO or prime seeks certification directly from a sub, the sub should evaluate:

- Does the sub have privity at all with the requesting party?
- Should the inquiry be routed through/coordinated with the prime consistent with flow-down clauses?
- How could a direct response to the government affect the sub's contractual position vis-à-vis the prime?

Flow-Down Discipline:

Review the subcontract for existing DFARS 239.73 or supply-chain flow-down clauses before assuming the directive applies at the sub-tier level.

Litigation Interplay

- The § 3252 designation the April 2 memo relies on is currently enjoined (PI in effect since Mar 26)
- N.D. Cal. cross-MSJ hearing July 30 — 8 days from now — may resolve the underlying merits
- D.C. Circuit FASCSA decision still pending

However:

- The memo has NOT been formally withdrawn by DoW
- The 30-day / 180-day deadlines continue to run on their face regardless of litigation posture

Note: This is a factor to weigh, not a resolved defense

Thank you for attending!

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