

## Bulk-Power System Executive Order: Implications for Current Projects, Future Projects, and NERC Compliance

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On May 1, 2020, President Donald Trump issued an Executive Order declaring a national emergency with respect to threats to the U.S. bulk-power system posed by the unrestricted supply of bulk power equipment by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, presumably including China, a source for many of the components impacted by the Executive Order. The Executive Order prohibits certain transactions for the “acquisition, importation, transfer, or installation” (transaction) of bulk-power equipment in cases where the Department of Energy (DOE) determines that such equipment poses an undue risk of sabotage to or subversion of the bulk-power system, or catastrophic effects on critical infrastructure or the economy, or otherwise poses an unacceptable risk to national security or U.S. persons.

In the National Emergencies Act (NEA), enacted in 1976, and in the International Emergency Economic Powers Act (IEEPA), enacted in 1977, Congress delegated to the President the authority to regulate a variety of international economic transactions following a declaration of national emergency. Neither the NEA nor IEEPA defines what constitutes a “national emergency.” Invocation of IEEPA is conditioned on a declaration regarding the necessity for dealing with an “unusual and extraordinary threat ... to the national security, foreign policy, or economy of the United States.” 50 U.S.C. § 1701. Notwithstanding IEEPA’s sweeping delegation of authority, and the fact that one of the reasons for its enactment was the perception that presidents had previously allowed national emergencies to continue for far too long, Congress has not once attempted to terminate a national emergency declared by a president under IEEPA.

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