

Regulatory Alert: Section 889 of NDAA for FY 2019

Please note, the following is for informational purposes only and not for purposes of providing legal advice. You should contact your attorney to obtain legal advice as needed.

This communication is to inform you of United States legislation aimed at eliminating the use of Chinese telecommunications equipment in the federal acquisition supply chain and the associated requirements for Raytheon Technologies Corporation's suppliers. This legislation is expected to significantly impact a broad range of industries, including aerospace and defense companies such as Raytheon Technologies Corporation, and our supply chain.

Due to U.S. national security concerns and applicable law, companies that have not already done so must immediately discontinue any use of “covered telecommunications equipment or services” (as defined below) in products and services – regardless of end use – provided to Raytheon Technologies Corporation, including, each of its divisions, business units, subsidiaries and affiliates (collectively, “RTX”). If your company uses covered telecommunications equipment or services in goods or services supplied to RTX, please let us know through the Section889@rtx.com email address by August 13, 2020 (or if subsequently determined, immediately thereafter).

Background

Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (“Section 889”) is designed to ensure the U.S. government supply chain excludes telecommunications and video surveillance technology from certain Chinese companies deemed to present a national security concern. The legislation is comprised of two parts.

Effective August 2019, NDAA 889(a)(1)(A) (“Section 889, Part A”) prohibits the U.S. government from purchasing any equipment, system or service that uses “covered telecommunications equipment or service” as a substantial or essential component of any system, or as critical technology as part of any system.¹

Effective August 13, 2020, NDAA 889(a)(1)(B) (“Section 889, Part B”) prohibits the U.S. government from entering into a contract, or extending or renewing a contract, with an entity (i.e., prime contractor) that uses any equipment, system, or service that uses “covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system regardless of whether such equipment, system or service is used for military or commercial applications.

“Covered telecommunications equipment or services” is defined in NDAA 889 as follows.

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

¹ FAR issued an interim implementation rule which was updated in December 2019.

- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; and
- Potentially other entities the U.S. government reasonably believes is owned or controlled by, or otherwise connected to, the government of China.

On July 14, 2020, the government published an interim rule regarding Section 889, Part B that will take effect August 13, 2020. Below are a few key takeaways with respect to the prohibited technology and our supply chain.

NDAA 889 Part B – Key Takeaways

- *Representations*: Government contractors will be required to submit a representation with each offer, under an update to the provision at FAR 52.204-24, indicating whether, after conducting a reasonable inquiry, the offering entity (i.e., the prime contractor) uses covered telecommunications equipment or services.
- *End Products & Components*: Prohibition applies to all end products produced by the identified Chinese companies (i.e., Huawei et al.) as well as to equipment, systems, or services containing or using “covered telecommunications equipment.” For example, modems manufactured by a third party that contain Huawei components would be prohibited under Section 889.

To summarize and reinforce some important potential compliance impacts from Section 889:

- You must take steps to determine if products and services you sell to RTX (regardless of end use) use or contain “covered telecommunications equipment or services.” If your products or services do so, please notify us through the Section889@rtx.com email address by August 13, 2020 (or if subsequently determined, immediately thereafter).
- You may be asked by RTX and your other customers to assist in obtaining information regarding whether goods and services you provide contain or use covered technology or services, and if so, your phase-out plan. It is important you and your supply chain maintain supporting documentation with respect to your investigation and determination.

To learn more about the legislation and national security concerns regarding at issue, please see:

- The National Defense Authorization Act for Fiscal Year 2019, Section 889, available [here](#).
- Acquisition.gov website for GSA Guidance on Section 889, available [here](#).

If you have any questions concerning NDAA 899 related to RTX, please email Section889@rtx.com.

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