



WARNING REPORT

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Industries: Maritime

NDAAs Prohibits Use of Chinese Cameras—Possible Grant Implications

Background:

The **John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019**, Public Law 115-232 August 13, 2018, includes *SEC. 889. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*. The NDAA took effect one year after the date of enactment, so August 13, 2019.¹

NDAA page 284 prohibits the procurement or renewal of banned equipment (“Covered Telecommunications Equipment or Services”) including: (A) Telecommunications equipment produced by **Huawei Technologies Company or ZTE Corporation** (or any subsidiary or affiliate of such entities), (B) 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).

According to an NPR article on this topic, the banned equipment is “meant to be providing security, but Congress sees them as a way for China to spy.”² Forbes adds, as per the National Defense Authorization Act (NDAA), “agencies are currently required to either have a plan for removing the relevant technologies or prove they’ve removed them already.”³

Of interest, NDAA Section 889 references “the head of an executive agency” and then refers to Section 133 of title 41, United States Code which according to Cornell Law School is defined as:

- (1) an executive department
- (2) a military department
- (3) an independent establishment, and
- (4) a wholly owned Government corporation fully subject to chapter 91 of title 31⁴

Banned Equipment and Grants:

The MPS-ISAO received a request for information (RFI) from a U.S. customer who was trying to assess the potential impact of having NDAA banned surveillance equipment in their environment and their organization’s ability to apply for Federal Grants (Port Security Grant Program funding as an example).

¹ <https://www.congress.gov/bill/115th-congress/house-bill/5515/text>

² <https://www.npr.org/2019/08/08/749318323/government-deadline-approaches-to-ban-chinese-made-surveillance-cameras>

³ <https://www.forbes.com/sites/thomasbrewster/2019/08/21/2000-banned-chinese-surveillance-cameras-keep-watch-over-us-government-sites/#3be64ae47f65>

⁴ <https://www.law.cornell.edu/uscode/text/41/133>

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The MPS-ISAO, in turn, issued an RFI to FEMA requesting clarification to, "If a U.S. Port uses cameras that are on the U.S. Government's "banned" list, does this prevent their ability to apply for future Port Security Program Grants?"

FEMA consulted with their attorneys are returned the following reply.

FEMA Response:

As a follow up to our last communication regarding your inquiry: "If a U.S. Port uses cameras that are on the U.S. Government's "banned" list, does this prevent their ability to apply for future Port Security Program Grants?" It appears to apply to future funding, not past funding, and any grant related restrictions will be published as they become available. **Effective Now! The "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment" (FAR Case 2018-017) interim rule is now effective! This rule amends the FAR to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232). Paragraph (a)(1)(A) of section 889 prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication equipment or service as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted. Further prohibitions at paragraph (a)(1)(B) of section 889 go into effect August 13, 2020 and will be addressed through separate rulemaking. See Acquisition.gov for more information.**

NDAA § 889 Quick Hits:

- Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA) generally prohibits federal funding in procurement and grants from going to certain entities and products for national security reasons. This two-part prohibition limits federal procurements as of August 2019 and grant funding as of August 2020.
 - o **It is very likely this will apply to grants obligated after August 2020.**
- Section 889 prohibits providing agency funding to telecommunications or video surveillance equipment from certain problematic entities or entities using specified problematic entities' services or equipment.
- Section 889 lists the prohibited ("covered") telecommunications equipment or services. It includes equipment produced by certain named corporations, any telecommunications or video surveillance services that use their equipment, and the option for the Secretary of Defense to broaden this to other entities.
 - o Optional expansion: The optional provision allows the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the FBI, to cover telecommunications or video surveillance equipment or services produced or provided by an entity he (Secretary of Defense) reasonably believes is owned, controlled by, or otherwise connected to a foreign government. See § 889(f)(3)(D).

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The MPS-ISAO found an Acquisition.gov section, "GSA Guidance on Section 889 Far Rule" which provides information for GSA contractors (supply chain).⁵

Conclusion:

The MPS-ISAO has provided this report for situational awareness. Our intention is to inform the Maritime Community that they may be impacted by the NDAA and Government grant funding could be at risk – not to provide advice.

Please consult NDAA for additional details and direct questions to your FEMA representative.

We appreciate this topic being brought to our attention.

End of Report.

About MPS-ISAO

Headquartered at the Global Situational Awareness Center (GSAC) at NASA/Kennedy Space Center, the MPS-ISAO is private sector-led working in collaboration with government to advance Port and Maritime cyber resilience. The core mission to enable and sustain a safe, secure and resilient Maritime and Port Critical Infrastructure through security situational intelligence, bi-directional information sharing, coordinated response, and best practice adoption supported by role-based education. The MPS-ISAO is a founding member of the International Association of Certified ISAOs (IACI) and is a [2019 CSO50 Honoree](#). More information at: www.mpsisao.org.

⁵ <https://acquisition.gov/gsa-deviation/supply-chain-aug13>

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