

889 Compliance - Training 3/29/21

Q & A

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Question: Does covered telecommunications equipment include cell phones?

Answer: That particular scenario is still being discussed internally at MGB. There is no clear guidance from the U.S. government on how personal devices should be handled under Section 889. Organizations are dealing with such scenarios on a case-by-case basis. MGB funds may not be used to purchase cell phones from the prohibited companies.

Question: Can we count on IS and Information Security to vet the hardware and software we use?

Answer: Andrew Chase and Mary Mitchell, with their Information Security and Supply Chain colleagues, are handling enterprise-wide compliance. We are not expecting you to worry about what is happening within MGB in terms of the organization's forthcoming guidance on telecommunications technology. The purpose of this training was to make you aware of the Federal government's rules in this area.

Question: Are the prohibited companies you identified listed on government sanction lists, i.e., OIG, SAM, SDN?

Answer: Several Huawei entities are listed on sanction lists; however, there is no official list for Section 889 purposes. As a reminder, Section 889 is a different legal requirement from economic sanctions and export controls.

Question: How do the FAR clauses apply to us in our international business? Can we assume that an MGB advisory contract with an entity in China that uses Huawei (and other prohibited) products is permissible as long as the MGB contract does not directly involve any Federal entities or services to the Federal government?

Answer: The 889 Part B prohibition is on Federal contractors using the prohibited technology. For Part B compliance, it does not matter whether that internal use has anything to do with Federal contracting work. Since MGB has Federal research contracts and grants, MGB as an organization is required to comply on an enterprise-wide basis with the 889 rules.

If you are using a shared site with another party, you are possibly in an 889 Part B "use" situation. If you are connecting to a Chinese hospital and you are exchanging information back and forth over connected IT systems, it may be an 889 Part B "use" situation. It is helpful to put boundaries around your information system(s) vs. relying on someone else's information

system(s), so you can take the position you are not “using” the other parties’ system. The more separated you are the more reasonable your position is with the Federal government. Unfortunately, the more intertwined your systems are the more challenging it will be to say you are not using the other parties’ equipment, systems, or services under 889. MGB is developing a strategy to address these fact-specific scenarios as part of the organization’s overall compliance program.

Question: If Part B does not flow to subcontractors, is there any prohibition of just “doing business” with an organization that uses Huawei products? For example, we are a Federal contractor, but also a “contractor” to a Chinese company that pays us for advisory services (and that Chinese company uses Huawei prohibited items.)

Answer: Section 889 is not a default prohibition on doing business with Chinese entities. Providing services to a Chinese company is essentially an “outflow” and while it may implicate export controls rules, it would not necessarily trigger Section 889 concerns.

Only if in performing these advisory services the government contractor is “using” prohibited technology (see e.g., Question 5 above about connecting IT systems) does it become a Section 889 issue.

Consider a scenario where the advisory services consist solely of providing written advice to a Chinese company. In that scenario, while there may be export controls considerations, there would not be a Section 889 issue. However, if in providing the advisory services you use a shared environment with the Chinese company (e.g., cloud platform, shared site, connecting to another parties’ IT systems, etc.) that could potentially be a Section 889 issue.

Question: What about post docs, PIs, grad students, etc. anyone in the system that have Huawei cell phones and/or use Huawei as their ISP?

Answer: That particular scenario is still being discussed internally at MGB (see the answer above about cell phones and other personal devices).

Question: What about portal interactions? Having them access second opinions via portal interactions?

Answer: See Questions 5 and 6 above.

Question: Are there any prohibitions around MGB being a service provider for a company that uses Huawei equipment?

Answer: See Questions 5 and 6 above.

Question: Are there any allowances for Federal contracts in place prior to the August 2019 or August 2020 implementation dates? Issued a waiver for 'ongoing' project?

Answer: It depends. If your Contracting Officer has amended the contract to include the latest government contracting clauses – most U.S. government contracts have been amended by now. If your contract has been amended, you now have a reporting obligation that asks you to report within one business day if you discover prohibited technology.