



August 20, 2020

GSA SMARTPAY SMART BULLETIN

**FEDERAL ACQUISITION SERVICE
CENTER FOR CHARGE CARD MANAGEMENT
SMART BULLETIN NO. 033**

**Card Management Implications and Information for Agency
Consideration in Relation to the Section 889 Prohibition on Acquiring
Certain Telecommunications and Video Surveillance Equipment**

EFFECTIVE DATE: August 20, 2020

BUSINESS LINE(S) AFFECTED:

Purchase, Travel, Fleet and Integrated

INTRODUCTION:

This Smart Bulletin, which augments Smart Bulletin 029 effective August 13, 2019, provides guidance to agencies implementing section 889(a)(1)(B) (“Part B”) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), which prohibits Federal agencies from purchasing products or services from entities that use covered equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, regardless of whether that usage is in performance of work under Federal contract. This prohibition became effective August 13, 2020. This prohibition applies to all contracts, regardless of dollar amount, including micro-purchases on charge cards as well as formal contracting actions. (The full text of the related Federal Acquisition Regulation (FAR) interim rule on section 889 can be viewed at: <https://www.regulations.gov/document?D=FAR-2019-0009-0003>.)

The “Part A” prohibition (Sec 889(a)(1)(A)), prohibiting the purchase of equipment/services containing covered technology, went into effect on August 13, 2019 and is discussed in Smart Bulletin 029. As of the date of this Smart Bulletin, “covered equipment/services” include those provided or produced by the following

entities and their subsidiaries and affiliates:

- Huawei Technologies Company
- ZTE Corporation
- Hytera Communications Corp
- Hangzhou Digital Hikvision Technology Company
- Dahua Technology Company

Additional entities may be added to this list. The Center For Charge Card Management (CCCM) will maintain a current list for cardholders and card managers on the GSA SmartPay® website at: <https://smartpay.gsa.gov/content/prohibited-vendor-list>.

Agencies are required to develop policies regarding their use of charge cards in the context of both section 889 prohibitions (Parts A and B). This Smart Bulletin provides operational guidance and information on issues agencies participating in GSA SmartPay program may desire to consider as they develop those policies, including section 889 implications for all business lines (purchase, travel, and fleet cards).

This Smart Bulletin uses summary language to address complex issues that may develop under certain purchasing circumstances. When such circumstances exist, or are anticipated to arise related to a planned purchase, cardholders and card managers are encouraged to consult with agency acquisition, information technology and/or supply chain risk management policy officials in accordance with agency policy.

This Smart Bulletin does not address section 889-related requirements related to formal contracting procedures. Instead, it focuses on section 889 implications with regard to purchase card micro-purchases, travel and fleet card transactions. Because integrated cards combine these account types, they are not separately addressed.

BACKGROUND:

GSA SmartPay charge cards are used to obtain over \$30 billion in products and services in support of agency missions through approximately 100 million purchase, travel and fleet transactions each fiscal year. Approximately 86% of these transactions are conducted on-line. Most of these transactions are conducted by non-procurement personnel. In FY19, purchase card transactions alone totaled \$22 billion, addressing a wide range of products and services. In that same year, approximately \$1.2 billion of these purchases (5.7%) occurred in electronics-related Merchant Category Codes (MCCs). This information is meant to provide insight into the relative level of risk and does not capture the full scope of electronic purchases, nor does it capture purchases from merchants whose systems may use equipment/services that are now covered equipment/services. Furthermore,

review of charge card purchase data does not indicate any direct purchases from the five specific sources listed above. FY19 travel card spend totaled approximately \$9 billion through 44 million transactions with a limited number of airlines and rental car agencies. Hotel spend is much more widespread. There are more than 3 million travel accounts. Fleet card FY19 spend was approximately \$2 billion, through almost 31 million transactions, most of which are for fuel for government vehicles. These fueling transactions take place through a large number of independent or franchised service stations.

ACTION:

The Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP) requires agencies to develop their own policies addressing charge card compliance with section 889 (Parts A and B). Attachment 1 to this Smart Bulletin provides information, by card type, that agencies may want to consider as they develop their card use policies in relation to section 889.

Agency cardholder or card manager questions regarding the application of section 889 to a particular purchase should be directed to appropriate agency acquisition, information technology, and/or supply chain risk management staff. Other questions or comments regarding this Smart Bulletin should be directed by agency headquarters A/OPCs to CCCM at 703-605-2808, or by email to: gsa_smartpay@gsa.gov.

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[END]

Attachment (1): Charge Card Management Section 889 Implications and Information for Agency Consideration

Section 889 Charge Card Management Implications and Information for Agency Consideration

August 20, 2020

Version 1.0

1. PURCHASE CARD IMPLICATIONS AND INFORMATION

- a. Leveraging Existing Federal Contracts/Ordering Sites: As a best practice, agencies may desire to consider a policy emphasizing the security benefits of using existing government on-line shopping sites as the first source of supply if practical, such as: GSA Advantage!, Fed Mall, GSA Global Supply, category-managed solutions, agency-specific vehicles, etc. The expectation is that the cognizant contracting office will ensure the required section 889 language is added to the contracts underlying these offerings and their compliance.
- b. Written Representations Implications: Because micro-purchases on charge cards generally do not require FAR provisions or clauses, cardholders are not required to use the sec 889 representation clauses and reporting provision regarding the use of covered equipment/services. Regardless, cardholders are still responsible for ensuring their purchases are compliant with section 889. Should an agency require open market micro-purchases (purchases that are not made under an existing Federal contract or order site), the agency should note that obtaining written representations to ensure compliance with section 889 will likely prove difficult, especially given the volume of online purchases. As a result, purchases previously handled by front-line non-procurement purchase cardholders may now need to be addressed by servicing contracting offices instead. Agencies may, therefore, want to consider the implications of such a shift in workload.
- c. Managing Risk: The majority of purchase card purchases are low risk (office and cleaning supplies, clothing, food services, training, healthcare supplies, etc.), not items or equipment that connect to the Internet.
 1. Agencies may consider placing limits on buying open market Information Technology (IT) equipment or services, directing small IT buys to Contracting Officers or consider requiring advance approval through an appropriate office for high-risk items such as computers and peripherals, phones, security cameras, drones, etc. especially if they are planned to be purchased on the open market.
 2. While acquisition guidance on section 889 emphasizes use of Product or Service Codes (PSCs) in evaluating risk, use of PSCs in agency card management policy is likely of limited utility. Instead, the commercial card payment networks use Merchant Category Codes (MCCs) to

categorize merchants and transactions. Agencies can run transaction data queries using MCCs in GSA SmartPay contractor bank Electronic Access Systems to help gauge the degree of cardholder higher-risk technology purchases. For example, these representative MCCs could include the following, but note that information technology and surveillance equipment can be purchased from a wide range of sources. It is not recommended that agencies block these MCCs, as doing so could also prevent transactions through Government buying sites such as GSA Advantage!

Merchant Category Code	Description
5045	Computers, Computer Peripheral Equipment, Software
5065	Electrical Parts and Equipment
5732	Electronic Sales
4814	FAX and Telecommunications Service
5734	Computer Software Stores

3. Supplemental cardholder, A/OPC and Approving Official training is recommended as the best tool to ensure national security issues are properly taken into account in card purchases.

2. TRAVEL CARD IMPLICATIONS AND INFORMATION

a. Individually Billed Accounts (IBAs): Although the Government authorizes IBAs to be established under the GSA SmartPay Program, the Government accepts no liability for charges made against the IBAs, unless specified by the agency/organization. Unless the agency has accepted liability for IBA travel card charges, section 889 requirements are not applicable.

b. Centrally Billed Accounts (CBAs): CBA transactions are subject to section 889 requirements.

i. GSA City Pairs discount airfare program: The FY21 GSA City Pairs contracts were awarded on July 14, 2020. Accordingly, section 889 Part B is not required for FY21 City Pairs contracts. An assessment will be made as to Part B's implementation in the FY22 solicitation and resulting contracts. Additionally, GSA is working with the E-Gov Travel Service 2 (ETS2)

providers Concur Technologies, Inc. and CWSatoTravel to address section 889 Part B requirements.

- ii. Rental car contracts: These are managed by the Defense Travel Management Organization (DTMO). GSA also offers a short-term (“RSVP”) car rental program. In both cases, the cognizant offices are working to include the appropriate section 889 clauses and provisions in these contracts.
- iii. Where CBA travel accounts are used to reserve hotel lodging space which is subsequently billed to a traveler’s IBA card, the transactions are considered IBA transactions and do not incur a Federal Government liability. Accordingly, they are not subject to section 889.

3. FLEET CARD IMPLICATIONS AND INFORMATION

Most fleet card transactions are for fueling and maintaining government vehicles. There are no government-wide, non-tactical vehicle fueling and maintenance/repair contracts because the service station and automotive repair industries largely consist of independent dealers and franchises. Fleet card transactions generally carry a lower security risk, because the vast majority of fueling transactions and/or vehicle repairs do not involve the procurement of information technology or communication technology. Additionally, agencies may want to consider utilizing other measures that may lower the security risks associated with fleet card transactions, such as:

- i. Rotating vendors for vehicle fueling and maintenance/repair when practical
- ii. Use of state license plates where authorized or required due to agency mission
- iii. Fueling and obtaining maintenance at Government facilities when authorized and available, consistent with applicable policies

4. GENERAL IMPLICATIONS AND INFORMATION

i. Cardholder, A/OPC and Approving Official Training: CCCM modified its on-line training in August 2019 to address section 889 Part A. CCCM is working to develop additional training that will address the Part B prohibitions in the charge card environment. Headquarters A/OPCs will be advised when section 889 training is available or updated. Agencies also will likely need to develop agency-specific training to address any agency-unique section 889 card use and management policies. Note that section 889 training for acquisition officials is now available through the Defense Acquisition University.

Agencies may want to assess its suitability for cardholders and card management officials.

ii. Communications: While general information on section 889 in relation to charge card use is already posted on the GSA SmartPay website (smartpay.gsa.gov) and further information will be added when available, agencies should consider a communications strategy to ensure proper cardholder and card manager awareness of agency section 889 related policies.

iii. Merchant Use of Third Party Payment Processors: Some on-line merchants elect to use third party payment processors to process the payments they receive. Agency policies on the acceptability of such processors vary. Third party payment processors are discussed in Smart Bulletin 023, dated August 22, 2018. A relatively small number of merchants choose to utilize third party payment processors in order to accept payments without having to establish a merchant account through a bank. Some merchants find that this is a more cost effective option, especially if they do not process enough transactions to establish their own merchant account to accept charge cards. For purposes of section 889, these merchant third party payment processors are not the entity from which the purchase is being made, so the cardholder is not required to ascertain whether the third party payment processor uses covered telecommunications or equipment. Agencies may choose to update their third party processor policies (if any) with regard to section 889.

iv. Potential Loss of Refund Revenue: Agency policies which result in the shift of transactions to servicing contracting offices could still be made with purchase cards by contracting officials to help preserve agency refund revenue. However, to the extent agency policy shifts transactions off purchase cards, agencies may need to take into account, from a financial management perspective, the attendant loss of refund revenue.

v. Waivers: Agencies may choose to pursue waivers in accordance with section 889. Should such waivers be approved, headquarters A/OPCs are encouraged to quickly disseminate that information to cardholders and card management officials, especially with regard to the products and/or services covered by the waiver and the waiver duration. To assist in this effort, if desired by the agency, CCCM will post copies of unclassified 889 agency waivers on the GSA SmartPay website, if they are shared with CCCM by the agency. To obtain this assistance, headquarters A/OPCs should contact their CCCM point of contact or email a copy of approved waivers to the central CCCM mailbox at: gsa.smartpay@gsa.gov.

vi. Status of the GSA SmartPay 3 master contracts: CCCM is working closely with the GSA SmartPay contractor banks to determine their section 889 part B compliance. The contracts will be modified as

necessary to ensure compliance with section 889. As of the date of this Smart Bulletin, these master contracts are in compliance with section 889 as all agency task orders have been placed and no new task order awards are anticipated; no option exercises are due; and System for Award Management (SAM) contractor bank recertification is not required until spring 2021. At the task order level, agencies are encouraged to consult CCCM before modifying agency task orders to include section 889 requirements.

[End of Attachment 1]