



ACQUISITION
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

SEP 22 2020

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY, AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (ENERGY,
INSTALLATIONS, AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT, AND ENERGY)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Guidance – Prohibition on the Use of Certain Energy Sourced from Inside the
Russian Federation

In accordance with Section 2911(a) of title 10, United States Code, the Secretary of Defense shall ensure the readiness of the armed forces for their military missions by pursuing energy security and resilience. Further, Department of Defense (DoD) Instruction 4170.11, “Installation Energy Management,” requires DoD Components to pursue energy resilience. Maintaining secure access to energy resources is critical to the Department’s execution of its mission, and ensuring energy resilience at our installations is a top priority.

This memorandum directs DoD Components to take immediate action to implement section 2821 of the National Defense Authorization Act for FY 2020 (Pub. L. 116-92). Section 2821 requires the Secretary of Defense to ensure that each contract for the acquisition of furnished energy for a covered military installation in Europe does not include energy sourced from inside the Russian Federation.

In addition, the Acting Principal Director, Defense Pricing and Contracting issued, “Class deviation 2020-00018, Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation,” on May 29, 2020, to provide guidance to contracting officers for their specific responsibilities to comply with the requirements of section 2821. The class deviation remains unchanged.

My point of contact is Dr. Ariel Castillo, Office of the Deputy Assistant Secretary of Defense for Energy, at (571) 372-6830 or ariel.s.castillo.civ@mail.mil.

Ellen M. Lord

Attachment:
As stated

cc:
U.S. European Command, J4, Logistics

GUIDANCE AND INSTRUCTIONS ON IMPLEMENTING FY 2020 NDAA SECTION 2821 REQUIREMENTS

Guidance and Instructions.

In order to promote energy security at Department of Defense (DoD) installations in Europe, Congress has directed that DoD should avoid the use of energy sourced from inside the Russian Federation to furnish energy to its European military bases. The prohibition applies to all forms of energy. The prohibition applies only to main operating bases as that term is defined and applied by DoD. The prohibition applies only to Europe, not to Asia (e.g., those parts of Turkey located in Asia). The prohibition applies to energy “furnished to a covered military installation”, which means the energy itself must be furnished to the military installation, not to a third-party that uses it to create some other form of energy (e.g., heating, cooling, electric, etc.).

The mission readiness of DoD European installations is dependent on secure and resilient energy. DoD will not purchase energy sourced from inside the Russian Federation unless there is no reasonable alternative or it is impossible or impractical to determine where the energy was sourced. If there is no reasonable alternative or it is impossible or impractical to determine where the energy was sourced, the prohibition in section 2821 will be waived and the congressional defense committees notified accordingly. If a waiver must be pursued, the agency will aggregate submissions to the maximum extent practicable to ensure cost effectiveness.

Where a waiver is granted, the installation shall take the necessary steps to achieve the ability to sustain mission critical operations during an energy supply disruption without dependence on energy sourced from inside the Russian Federation. These efforts shall be documented and auditable, and the contracting officer shall obtain a copy of the waiver and notice from the requiring activity or program manager prior to awarding the contract and include a copy of the waiver and notice in the contract file.

Further, not later than 14 days before the execution of any energy contract for which a waiver is granted, the agency head, delegable to a level no lower than the head of the contracting activity, shall submit to the congressional defense committees a notice of the waiver with a copy to the Principal Director of Defense Pricing and Contracting via email at osd.pentagon.ousd-a-s.mbx.dpc-cp@mail.mil.

Procedures for waivers for national security interests.

(a) *Waiver authority; certification.* The head of an agency may waive application of section 2821 to a specific contract for the acquisition of furnished energy for a covered military installation if the head of the agency certifies to the congressional defense committees that—

- (1) the waiver of such section is necessary to ensure an adequate supply of furnished energy for the covered military installation; and
- (2) the head of the agency has balanced these national security requirements against the potential risk associated with reliance upon the Russian Federation for furnished energy.

(b) *Submission of waiver notice.* Not later than 14 days before the execution of any energy contract for which a waiver is granted under subsection (a), the head of the agency shall submit to the congressional defense committees notice of the waiver. The waiver notice shall include the following:

- (1) The rationale for the waiver, including the basis for the certifications required by subsection (a).
- (2) An assessment of how the waiver may impact DoD's European energy resilience strategy.
- (3) An explanation of the measures the DoD is taking to mitigate the risk of using Russian Federation furnished energy.

(c) *Factors to consider for waivers.* The following are factors to take into consideration for granting a waiver:

- (1) The energy supply system is physically incapable of segregating Russian Federation energy from non-Russian Federation energy.
- (2) The installation can only obtain the necessary energy from its current supplier without the unaffordable expense of constructing new supply lines.
- (3) The price of requiring the supplier to segregate the energy is unaffordable and would result in the installation being unable to perform its mission within its budget authority.
- (4) Consideration of installation energy resilience and energy security have been taken into account (e.g., on-site sources of energy and fuel resupply would allow the installation to continue to perform its mission even with disruption of Russian Federation-sourced energy, the installation has addressed energy resilience and energy security risks and vulnerabilities, etc.) (Reference DoDI 4170.11, Installation Energy Management, Energy Resilience Requirements).