

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2019–0001, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–01; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–01. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–01, FAR Case 2018–008.

Authorization Act for Fiscal Year 2018. Section 847 expands the universe of nondevelopmental items that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments.

This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–01 is effective October 10, 2019 except for FAR Case 2018–008, which is effective November 12, 2019.

Kim Herrington,
Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,
Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2020–01; FAR Case 2018–008; Docket No. FAR–2018–0008; Sequence No. 1]

RIN 9000–AN68

Federal Acquisition Regulation; Definition of “Commercial Item”

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the National

Defense Authorization Act for Fiscal Year 2018 to revise the definition of a “commercial item.”

DATES: *Effective:* November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2020–01, FAR Case 2018–008.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 84 FR 20607 on May 10, 2019, to implement the statutory changes made to the definition of “commercial item” by section 847 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91, enacted December 12, 2017). The rule would broaden the definition to allow certain additional items developed exclusively at private expense to qualify for the benefits associated with being treated as a commercial item. Section 847 expands the universe of nondevelopmental items (NDIs) that qualify as commercial items to include items sold, in substantial quantities on a competitive basis, to multiple foreign governments. Three respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Changes

This final rule amends the definition of commercial item in FAR part 2 to reflect the statutory change made by section 847. Specifically, the rule adds the phrase “or to multiple foreign governments” at the end of paragraph (8). There are no changes as a result of comments on the proposed rule.

B. Analysis of Public Comments

1. Supports the proposed rule.
Comment: One respondent stated that the proposed rule accurately and effectively implements section 847.

Response: Noted.
2. Does not support the proposed rule.

Comment: One respondent stated that the rule is unnecessary, clouds the definition of what a commercial item is, and sets the stage for contracting officers

RULE LISTED IN FAC 2020–01

Subject	FAR Case	Analyst
Definition of “Commercial Item”.	2018–008	Delgado.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this item summary. FAC 2020–01 amends the FAR as follows:

Definition of “Commercial Item” (FAR Case 2018–008)

This final rule amends the definition of “commercial item” in FAR part 2 to reflect the statutory change made by section 847 of the National Defense