

# Rules and Regulations

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–82

[FMR Case 2016–102–3; Docket 2016–0019; Sequence No. 1]

RIN 3090–AJ76

### Federal Management Regulation (FMR); Utility Services

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is issuing a final rule to amend the Federal Management Regulation (FMR) part regarding utility services. The rule clarifies the authority an agency must have in order to procure utility services and describes in detail agencies' responsibilities concerning the procurement of such services. To better direct agencies that operate under a utility service delegation from GSA, the rule adds a reference to the section of the Federal Acquisition Regulation (FAR) that addresses the acquisition of utility services and other procurement guidance. Additionally, the rule clarifies responsibilities for the Department of Defense and the Department of Energy for compliance.

**DATES:** *Effective Date:* March 4, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Coneeney, Director, Real Property, Office of Government-wide Policy, at 202–208–2956, or email at [chris.coneeney@gsa.gov](mailto:chris.coneeney@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 FMR Case 2016–102–3.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

A proposed rule was published in the *Federal Register* on August 13, 2019 (84 FR 39994). The proposed rule expanded “Subpart A—General Provisions” to

better align with other parts of the FMR and clarified language in subpart B regarding agency authority and responsibilities. None of the proposed changes elicited any objections during the public comment period. In fact, only one public comment was received in response to the proposed rule, which was not germane. As a result, there were no changes made to the final rule from the published proposed rule.

This final rule amends the FMR to both clarify the scope of this part and the authority an agency must have to procure utility services by pointing the reader to the appropriate parts of the FAR that relate to the acquisition of utility services. It also clarifies the responsibilities of agencies, the Department of Defense, and the Department of Energy for compliance.

#### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action and was subject to review under Section 6(b) of E.O. 12866. It is not a major rule under 5 U.S.C. 804.

#### III. Executive Order 13771

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is related to agency organization, management, or personnel.

#### IV. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Regulatory Flexibility Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management.

#### V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### VI. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

#### List of Subjects in 41 CFR Part 102–82

Federal buildings and facilities, Government property management, Rates and fares, Utilities.

Dated: January 15, 2020.

**Emily W. Murphy,**

*Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA is revising 41 CFR part 102–82 to read as follows:

#### PART 102–82—UTILITY SERVICES

##### Subpart A—General Provisions

Sec.

102–82.5 What does this part cover?

102–82.10 What are the governing authorities for this part?

102–82.15 Who must comply with the provisions of this part?

102–82.20 To whom do “we,” “you,” and their variants refer?

102–82.25 How do we request a deviation from the provisions of this part?

##### Subpart B—Utility Services

102–82.30 What authority must my agency have in order to procure utility service(s)?

102–82.35 Can Executive agencies enter into contracts for utility services?

102–82.40 What are Executive agencies' rate intervention responsibilities?

**Authority:** 40 U.S.C. 121(c) and 40 U.S.C. 501.

##### Subpart A—General Provisions

#### § 102–82.5 What does this part cover?

This part covers the procurement and management of public utility services. It does not cover utilities that are provided as part of a lease. For more information on the procurement of utility services refer to Federal Acquisition Regulation (FAR) in 48 CFR part 41. For more information on the management of Utility Services, refer to 40 U.S.C. 501.

#### § 102–82.10 What are the governing authorities for this part?

The authorities for the regulations in this part are:

(a) 40 U.S.C. 121(c); and

(b) 40 U.S.C. 501.

**§ 102–82.15 Who must comply with the provisions of this part?**

All Executive agencies procuring, managing, or supplying utility services under Title 40 of the United States Code, including GSA's Public Buildings Service (PBS), Department of Defense, Department of Energy, and those agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with the provisions of this part. For information on a utility services delegation of authority, refer to § 102–72.100 of this chapter.

**§ 102–82.20 To whom do “we,” “you,” and their variants refer?**

Unless otherwise indicated, use of pronouns “we,” “you,” and their variants throughout this part refer to an Executive agency. Refer to part 102–71 of this chapter for the definition of Executive agency.

**§ 102–82.25 How do we request a deviation from the provisions of this part?**

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

**Subpart B—Utility Services**

**§ 102–82.30 What authority must my agency have in order to procure utility service(s)?**

If you do not have a delegation of authority issued by GSA to procure utility services, or independent authority for such procurements, you cannot procure utility services. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. For more information on a utility services delegation of authority refer to §§ 102–72.100 and 102–72.105 of this chapter.

**§ 102–82.35 Can Executive agencies enter into contracts for utility services?**

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense, when the Secretary determines it to be in the best interests of national security, may enter into contracts for utility services (such as commodities and utility rebate programs), pursuant to the terms and conditions contained in the delegation and in accordance with FAR part 41. FAR part 41 requires that agencies provide or procure from sources of supply that are the most advantageous

to the Federal Government in terms of economy, efficiency, reliability, or quality of service; while 40 U.S.C. 501(c) requires that agencies provide or procure such services with due regard to the mission responsibilities of the agencies concerned. For information on utility services delegation of authority refer to part 102–72 of this chapter. For additional information on contracts for utility services, search on the topics Utility or Energy on the Acquisition Gateway, <http://www.gsa.gov>.

**§ 102–82.40 What are Executive agencies' rate intervention responsibilities?**

Unless otherwise authorized by law, absent a delegation from GSA, Executive agencies must not engage in the types of representation referenced at 40 U.S.C. 501(c). Services for Executive agencies. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. Refer to part 102–71 of this chapter for definitions of Executive agencies and state. For information on delegation of authority refer to part 102–72 of this chapter.

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