

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 10 and 12**

[FAC 2021–02; FAR Case 2020–006; Item V; Docket No. FAR–2020–0006, Sequence No. 1]

RIN 9000–AO09

**Federal Acquisition Regulation:
Documentation of Market Research**

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 amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires the head of the agency to document the results of market research in a manner appropriate to the size and complexity of the acquisition.

DATES: *Effective:* November 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 or camara.francis@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 2021–02, FAR Case 2020–006.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD, GSA, and NASA are issuing a final rule to implement section 818 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92). Section 818 amends 10 U.S.C. 2377(c) and 41 U.S.C. 3307(d) to require the head of the agency to document the results of market research in a manner appropriate to the size and complexity of the acquisition.

II. Discussion and Analysis

Paragraph (e) of FAR 10.002 currently states that agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition. The change will make this mandatory. Conforming changes were made to FAR 12.101.

**III. Publication of This Final Rule for
Public Comment Is Not Required by
Statute**

The statutory provision that applies to the publication of the FAR is 41 U.S.C. 1707. Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it addresses agency documentation of market research. These requirements affect only the internal operating procedures of the Government.

IV. 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 is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The 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).

List of Subjects in 48 CFR Parts 10 and 12

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 10 and 12 as set forth below:

■ 1. The authority citation for 48 CFR parts 10 and 12 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 10—MARKET RESEARCH**10.002 [Amended]**

■ 2. Amend section 10.002 by removing from paragraph (e) “Agencies should” and adding “The head of the agency shall” in its place.

**PART 12—ACQUISITION OF
COMMERCIAL ITEMS****12.101 [Amended]**

■ 3. Amend section 12.101 by removing from the introductory text “Agencies” and adding “The head of the agency” in its place.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 12, 29, and 52**

[FAC 2021–02; FAR Case 2018–023; Item VI; Docket No. FAR–2018–0023, Sequence No. 1]

RIN 9000–AN81

**Federal Acquisition Regulation:
Taxes—Foreign Contracts in
Afghanistan**

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 amending the Federal Acquisition Regulation (FAR) to add two new clauses that notify