

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2020-0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2021-02; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2021-02. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

RULE LISTED IN FAC 2021-02

Item	Subject	FAR case	Analyst
I	Removal of FAR Appendix	2020-003	Boyer.
II	Removal of Obsolete Definitions	2020-002	Uddowla.
III	Update to Excess Personal Property Procedures	2019-019	Uddowla.
IV	Reserve Officer Training Corps and Military Recruiting on Campus	2018-021	Delgado.
V	Documentation of Market Research	2020-006	Francis.
VI	Taxes—Foreign Contracts in Afghanistan	2018-023	Funk.
VII	Recreational Services on Federal Lands	2019-002	Funk.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2021-02 amends the FAR as follows:

Item I—Removal of FAR Appendix (FAR Case 2020-003)

This final rule removes FAR references to the FAR appendix and the FAR looseleaf. The FAR appendix at an earlier time contained a copy of the Cost Accounting Standards Board regulations. These remain available at 48 CFR chapter 99. There is no effect on small entities. The FAR loose-leaf version is now published online at <https://www.acquisition.gov>. It is no longer published as a paper loose-leaf version.

Item II—Removal of Obsolete Definitions (FAR Case 2020-002)

This final rule amends the FAR to remove the definitions of the terms “annual receipts” and “number of employees” in FAR 19.101. The Small Business Administration (SBA) published a final rule at 84 FR 66561 on December 5, 2019, amending its regulations to update these terms in 13 CFR part 121 as part of SBA’s implementation of the Small Business Runway Extension Act of 2018. The

definitions in FAR 19.101 conflict with SBA’s revised regulation and are not needed in the FAR as these terms relate to determinations made by SBA, not contracting officers. In addition, this final rule moves the definition of “affiliates,” as used with regard to small business size determination, to appropriate locations in the FAR.

Item III—Update To Excess Personal Property Procedures (FAR Case 2019-019)

This final rule amends the FAR to update internal Government procedures on how agencies can locate excess personal property and to remove obsolete requirements. Specifically, this rule removes references to catalogs and bulletins issued by GSA, the use of a discontinued GSA form, and the ability to the examine reports and samples of excess personal property in GSA regional offices. Instead, the rule identifies the website through which agencies can find information on available excess personal property. Additionally, this rule updates the name of the offices handling excess personal property within GSA and provides a website containing contact information for those offices.

Item IV—Reserve Officer Training Corps and Military Recruiting on Campus (FAR Case 2018-021)

This final rule implements 10 U.S.C. 983, which prohibits the award of certain Federal contracts to institutions of higher education that prohibit Reserve Officer Training Corps (ROTC) units or military recruiting on campus.

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

Item V—Documentation of Market Research (FAR Case 2020-006)

This final rule amends the FAR to implement section 818 of the National Defense Authorization Act for Fiscal Year 2020, which requires the head of the agency to document the results of market research in a manner appropriate for the size and complexity of the acquisition.

Item VI—Taxes—Foreign Contracts in Afghanistan (FAR Case 2018-023)

This final rule amends the FAR to add two new clauses that notify contractors of requirements relating to Afghanistan taxes or similar charges when contracts are being performed in Afghanistan. Agreements established with the Islamic Republic of Afghanistan exempt the United States Forces and the North Atlantic Treaty Organization (NATO) Forces, and their contractors from

liability for Afghanistan taxes and similar charges (e.g. customs, duties, fees). These clauses were previously in the Defense Federal Acquisition Regulation Supplement and are now elevated to the FAR to eliminate the need for agency unique supplemental regulations and ensure unified guidance among the affected agencies consistent with the purpose of the FAR.

Item VII—Recreational Services on Federal Lands (FAR Case 2019–002)

This final rule amends FAR 22.1903(b)(2) and FAR clause 52.222–55(c)(2) to conform to a Department of Labor rule by adding seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands under contracts or contract-like instruments entered into with the Federal Government, to the list of exemptions from the requirements of Executive Order 13658, Establishing a Minimum Wage for Contractors. The current minimum wage is \$10.80 per hour. Lodging and food services are not exempted. Both rules implement Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands.

Item VIII—Technical Amendments

Editorial changes are made at FAR 4.2102, 52.213–4, 52.252–5, 52.252–6, and 53.228.

William F. Clark,

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

Federal Acquisition Circular (FAC) 2021–02 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 2021–02 is effective October 23, 2020 except for Items I through VIII, which are effective November 23, 2020.

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48 CFR Parts 1, 15, 28, 30, 42, and 44

[FAC 2021–02; FAR Case 2020–003; Item I; Docket No. FAR–2020–0003, Sequence 1] RIN 9000–AO06

Federal Acquisition Regulation: Removal of FAR Appendix

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 remove references to the FAR appendix. The Cost Accounting Standards Board regulations remain available in the Code of Federal Regulations. This final rule also deletes the few additional references to the FAR “looseleaf”.

DATES: *Effective:* November 23, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Bryon Boyer, Procurement Analyst, at 817–850–5580 or by email at bryon.boyer@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 2020–003.

SUPPLEMENTARY INFORMATION:

I. Background

The FAR appendix was created in 1988 (July 20, 1988, FAC 84–38) as “appendix A to part 30.” It was relabeled “appendix B” in 1992 (August 31, 1992, FAR Case 92–18), and eventually as just “the appendix” (July 25, 1997 technical amendment). The appendix does not appear in the Code of Federal Regulations other than as references to it. The appendix appears in the version of the FAR currently available online at <https://www.acquisition.gov/browse/index/far>. The original purpose of the appendix was to provide an easy way for readers to read the Cost Accounting Standards (CAS) Board regulations at 48 CFR chapter 99, that are heavily referenced in FAR part 30. That is no longer necessary. Users are able to access 48 CFR chapter 99 easily online at the electronic Code of Federal Regulation (eCFR) website (<https://www.ecfr.gov>). The CAS Board regulations no longer

appear in the appendix in full text. Therefore, references throughout the FAR to the CAS Board regulations being in the appendix are out of date. For all the regulation locations where “FAR appendix” is deleted, the citation to 48 CFR chapter 99 will be maintained to direct the workforce to the supporting regulation. To further help the workforce, [Acquisition.gov](https://www.acquisition.gov) is being updated to include hyperlinks for all “48 CFR chapter 99” citations.

This final rule also deletes the few additional references to the FAR “looseleaf”, because the FAR loose-leaf version is now published online at <https://www.acquisition.gov>. It is no longer published as a paper loose-leaf version.

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

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statutory provision in title 41 that applies to the publication of the Federal Acquisition Regulation. Subsection 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 the deletions of references to “the appendix” in the FAR “loose-leaf” are administrative and do not have a significant effect on the public or Government. As explained in the background section, users are directed to the eCFR to access the information that is at 48 CFR chapter 99, as it is no longer in “the appendix.”

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-The-Shelf (COTS) Items

This rule amends the FAR to delete references to “the appendix” in the FAR “loose-leaf.” The amendments are administrative in nature and do not change the applicability or the text of any FAR solicitation provisions or contract clauses.

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