



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1812,1813,1816,1819,1823,1832 and 1852

[Notice: (23-089)]

RIN 2700-AE71

**Federal Acquisition Regulation Supplement:** Revision of the Definition of “Commercial Item” (NFS Case 2022-N003)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** National Aeronautics and Space Administration (NASA) is issuing a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to conform to changes in the Federal Acquisition Regulation (FAR) that reflect an updated “commercial item” definition pursuant to a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232).

**DATES:** *Effective:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**FOR FURTHER INFORMATION CONTACT:** Andrew O’Rourke, NASA HQs, Office of Procurement Management and Policy Division, LP-011, 300 E. Street SW, Washington, DC 20456-0001. Telephone 202-358-4560; facsimile 202-358-3082.

### SUPPLEMENTARY INFORMATION:

#### I. Background

This final rule amends the NASA FAR Supplement(NFS) to change instances of “commercial item(s)” with commercial product(s), commercial services(s), or both commercial product(s) and commercial service(s) to match similar actions taken in the Federal Acquisition Regulation (FAR). FAR Case 2018-018 was published as a final rule at 86 FR 61017 on November 4, 2021, to implement section 836 of the John S. McCain National Defense

Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) to separate the definition of “commercial item” into the definitions of “commercial product” and “commercial service.”

It is important to note that the amendment to separate “commercial item” with “commercial product” and “commercial service” does not expand or shrink the universe of products or services that the Government may procure using NFS part 1812, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term “commercial item(s)” with “commercial product(s),” “commercial service(s),” “commercial product(s) or commercial service(s),” or “commercial product(s) and commercial service(s)” in the NFS including in part 1852, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

## **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 statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute 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 NASA is not issuing a new regulation; rather, this rule is merely an editorial change and will provide consistent language to the FAR (pursuant to section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019(Pub. L. 115-232)) throughout the NFS. The rule does not expand or shrink the universe of products or services that the Government may procure using NFS part 1812, nor does it change the terms and conditions

vendors must comply with. These requirements affect only the internal operating procedures of the Government.

### **III. 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. requirements with which vendors must comply.

### **IV. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a “major rule” under 5 U.S.C. 804(2).

### **V. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

### **VI. 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 1812, 1813, 1816, 1819, 1823, 1832 and 1852**

Government procurement.

**Erica Jones,**  
*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852 are amended as follows:

1. The authority citation for parts 1812, 1813, 1816, 1819, 1823, 1832 and 1852 continues to read as follows:

**Authority:** 51 U.S.C. sec. 20113(a) and 48 CFR chapter 1.

PARTS 1812, 1813, 1816, 1819, 1823, 1832, and 1852 – [AMENDED]

2. In parts 1812, 1816, 1819, 1823, 1832, and 1852 revise all references to “Commercial Items” to read “Commercial Products and Commercial Services.”

3. Amend Part 1832, by –

- a. Revising the subpart heading of 1832.1.
- b. Revising the heading to section 1832.111.
- c. Revising the subpart heading of 1832.4.

The revisions read as follows:

**Subpart 1832.1—Other Than Commercial Products And  
Services Financing**

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1832.111 Contractor clauses for other than commercial purchases

**Subpart 1832.4— Advance Payments For Other Than  
Commercial Products And Commercial Services**

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