



441 G St. N.W.
Washington, DC 20548

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October 16, 2023

The Honorable Gary C. Peters
Chairman
The Honorable Rand Paul
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable James Comer
Chairman
The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
House of Representatives

Subject: *Department of Defense; General Services Administration; National Aeronautics and Space Administration: Federal Acquisition Regulation: Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) (collectively, the agencies) entitled “Federal Acquisition Regulation: Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders” (RIN: 9000-AO13). We received the rule on October 2, 2023. It was published in the *Federal Register* as an interim rule on October 5, 2023. 88 Fed. Reg. 69503. The effective date is December 4, 2023.

The agencies state that the interim rule amends the Federal Acquisition Regulation, 48 C.F.R. Chapter 1, to implement supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018, Pub. L. No. 115-390, 132 Stat. 5173, and a final rule issued by the Federal Acquisition Security Council.

Enclosed is our assessment of the agencies’ compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: William F. Clark
Director, Office of Acquisition Policy
Office of Government-Wide Policy
General Services Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF DEFENSE;
GENERAL SERVICES ADMINISTRATION;
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
ENTITLED
“FEDERAL ACQUISITION REGULATION: IMPLEMENTATION OF
FEDERAL ACQUISITION SUPPLY CHAIN SECURITY ACT (FASCSA) ORDERS”
(RIN: 9000-AO13)

(i) Cost-benefit analysis

In their submission to us, the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) (collectively, the agencies) indicated they did not prepare an analysis of costs and benefits with respect to this rule. However, the agencies indicated in the interim rule that they have performed a regulatory impact analysis. The agencies further indicated that the total estimated public costs associated with the interim rule in millions of dollars calculated over a ten-year period are as follows:

Estimated Costs	3% Discount Rate	7% Discount Rate
Present Value	\$745 Million	\$903 Million
Annualized	\$106 Million	\$105 Million

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

The agencies stated that they expect the interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act. Accordingly, the agencies prepared an Initial Regulatory Flexibility Analysis that includes: a discussion of the reasons for the interim rule; a discussion of the objectives of, and legal basis for, the interim rule; a description and estimate of the number of small entities to which the interim rule will apply; a description of projected reporting, recordkeeping, and other compliance requirements of the interim rule; a discussion of relevant federal rules which may duplicate, overlap, or conflict with the interim rule; and a description of any significant alternatives to the rule.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

The interim rule does not discuss the Act. In their submission to us, the agencies indicated they did not prepare a written statement under section 202 of the Unfunded Mandates Reform Act of 1995, with respect to this rule.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for

administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In the interim rule, the agencies do not discuss the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The agencies did not publish a proposed rule. Rather, in the interim rule, the agencies invited interested parties to submit comments on or before December 4, 2023. The agencies indicated that they will consider public comments received in response to this interim rule in the formation of the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

The agencies stated that the interim rule contains information collection requirements as defined by the Act and that they are requesting emergency processing of the collection of information involved in the interim rule. The agencies further stated that they will publish a separate 30-day notice in the *Federal Register* requesting public comment on the proposed emergency information collections contained within this rule under OMB Control Number 9000-0205. The agencies estimated the annual reporting burden of the interim rule as follows:

Respondents: 6,113; Total Annual Responses: 6,113; Total Burden Hours: 12,226.

Statutory authorization for the rule

The agencies promulgated the interim rule pursuant to section 3016 and chapters 4 and 137 of title 10, as well as section 121(c) of title 40, and section 20113 of title 51, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The agencies stated that the interim rule is a significant regulatory action and therefore was subject to review under section 6(b) of the Order.

Executive Order No. 13132 (Federalism)

The interim rule does not discuss the Order. In their submission to us, the agencies indicated they did not discuss Executive Order 13132, among other Executive Orders, in the preamble to the rule.