under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.


Deborah Jordan,
Acting Regional Administrator, Region IX.

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BILLING CODE 6560–50–P
characteristics. In determining whether a modification is minor, agencies should consider the value and size of the modification and the comparative value and size of the final product.

- Products that were created by integrating commercial subsystems and components into a unique system. For example, a computer system composed of commercial subsystems would be considered a commercial item. Another example is industrial plant equipment that combines commercial components into a unique item based on customer needs.
- Installation services, maintenance services, repair services, training services, and other services procured to support a commercial product. Help desks, call centers, warranty repair services, user training, equipment installation, and other services related to item support are examples.
- Standalone services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog or market prices for specific tasks performed and under standard commercial terms and conditions. Construction, research and development (R&D), warehousing, garbage collection, and transportation of household goods are examples.
- NDIs, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. NDI is defined separately in FAR 2.101. An NDI includes an item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement. Examples include—
  o Protective vests used by police departments and rescue equipment used by fire and rescue units;
  o Defense products previously developed by defense agencies of U.S. allies and used exclusively for governmental purposes by Federal agencies, state or local governments, or a foreign government;
  o Items that require only minor modifications to meet the requirements of the procuring agency; and
  o A mechanical dereefer (mechanism for releasing parachute reefing lines) used with the U.S. Army’s cargo parachutes that was developed for and first used by the Canadian Army.

II. Discussion and Analysis

This proposed rule will amend the definition of commercial item in FAR part 2 to reflect the statutory change made by section 847. Specifically, the rule would add the phrase “or to multiple foreign governments” at the end of paragraph (8).

III. Expected Impact of the Proposed Rule

This rule allows for more transactions to follow requirements for commercial items. This simplifies the transaction in terms of fewer Government reporting requirements and should decrease the cost per transaction for both the Government and the contractor. Under the proposed rule, for the first time, NDIs that are developed exclusively at private expense and sold in substantial quantities to multiple foreign governments may be treated as commercial items.

Because commercial items, which include commercially available off-the-shelf items, are sold to the Government in the same way as NDIs, the Government can take advantage of the previous testing and general acceptance of the product in the commercial marketplace or by a state, local, or foreign government.

To promote the Government’s acquisition of commercial items, the law and FAR part 12 create a preference for buying commercial items and provide relief from certain record-keeping, reporting, and compliance requirements. According to an analysis published by the Section 809 Panel in its May 2017 Interim Report, commercial item acquisitions are subject to up to 138 contract clauses, while acquisitions for NDIs that do not meet the commercial item definition as well as acquisitions for non-commercial items could be subject to nearly 500 clauses, depending on the principal type and purpose of the contract. For example, a commercial firm selling an NDI today to multiple foreign governments in substantial quantities to multiple foreign governments may be treated as commercial items if developed exclusively at private expense have been sold or are expected to be sold to multiple foreign governments in substantial quantities, that are not also sold in substantial quantities to multiple State and local governments.

Accordingly, DoD, GSA, and NASA welcome feedback, especially from respondents who would expressly benefit from this rulemaking, such as: (i) Identification of any transactional information (e.g., Procurement Instrument Identifiers (PIIDs)) associated with contracts awarded in the past 10 years that would have benefited from the rule had it been in effect; (ii) any information that might help the regulatory drafters better understand—both qualitatively and quantitatively—the savings and/or cost avoidance that the rule will provide; and (iii) potential burden reductions associated with future regulatory actions that facilitate broader acquisition of commercial items. In responding to item (ii), respondents are encouraged to discuss, to the extent possible, specific components of savings and cost avoidance (e.g., identify savings and/or cost-avoidance associated with specific clauses that would no longer be required as a result of this regulatory change).

IV. Applicability To Contract At or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to amend the FAR to change the definition of “commercial item”. The revision does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

V. 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 not a significant regulatory action and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs (OIRA) under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.
VI. Executive Order 13771

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details are provided in section III of this preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to 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. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to change the definition of “commercial item” so that NDI’s that are developed exclusively at private expense and sold in substantial quantities to multiple foreign governments may be treated as commercial items. The objective is to implement section 847 of the NDAA for FY18. The legal basis for this rule is 41 U.S.C. 103(b).

The proposed rule impacts all entities who do business with the Federal Government, including the over 327,458 small business registrants in the System for Award Management database. This proposed rule expands the definition of “commercial item” for nondevelopmental items (NDIs) to include those sold to multiple foreign governments. This change will allow more acquisitions to fall under the definition of commercial item procurements and use standard commercial terms and conditions to the maximum extent practicable. This will result in a reduction of statutory and regulatory requirements as FAR part 12 contract actions are exempt at the prime or subcontract level from various statutes, policies, and contracting requirements unique to the federal procurement process. Therefore, small businesses would benefit from the streamlined processes.

The proposed rule does not include additional reporting or record keeping requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no available alternatives to the proposed rule to accomplish the desired objective of the statute. Small businesses will benefit from the streamlined commercial acquisition procedures.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–008) in correspondence.

VIII. Paperwork Reduction Act

This 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 Part 2

Government procurement.

Dated: April 22, 2019.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 2 as set forth below:

PART 2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR part 2 continues to read as follows:

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

2.101 [Amended]

2. In paragraph (b)(2), amend paragraph (8) in the definition of “Commercial item” by removing “local governments” and adding in its place “local governments or to multiple foreign governments”.

[FR Doc. 2019–09703 Filed 5–9–19; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190214116–9116–01]

RIN 0648–B169

Fisheries of the Northeastern United States: Northeast Multispecies Fishery; Fishing Year 2019

Recreational Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes fishing year 2019 recreational management measures for Gulf of Maine cod and haddock and Georges Bank cod. This action is necessary to respond to updated catch and other scientific information. The proposed measures are intended to ensure the recreational fishery achieves, but does not exceed, its fishing year 2019 catch limits.

DATES: Comments must be received by May 28, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0140, by either of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

• Mail: Submit written comments to: Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Fishing Year 2019 Groundfish Recreational Measures.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Copies of the analyses supporting this rulemaking, including the Framework Adjustment 57 environmental assessment (EA) prepared by the New England Fishery Management Council are available from: Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. The supporting documents are also accessible via the internet at: http://www.nefmc.org/management-plans/northeast-multispecies or http://www.regulations.gov.


SUPPLEMENTARY INFORMATION: