B. Regulatory Flexibility Act

The proposed language will 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.* This rule will have this impact as a result of the following:

- (1) It establishes a much broader definition of "commercial items" compared to the language of either FAR Part 11 or by including certain modifications to existing items and by including certain commercial services. In both cases, small business is very likely to benefit from this expanded definition;
- (2) It establishes a requirement for conducting market research in certain circumstances before issuing solicitations which should benefit small business by ensuring the contracting activity has conducted sufficient research to be aware of the availability of commercial items and the practices used in the commercial market place to acquire them. The rule also cautions contracting officers not to require potential sources to submit more than the minimum information necessary as a part of market research.
- (3) It establishes a clear preference for the acquisition of commercial items thereby enabling more small businesses that offer commercial items to participate in Government acquisition;
- (4) It establishes a clear preference for stating Government requirements in terms of functions to be performed, performance required, or essential physical characteristics rather than detailed, Government-unique design specifications thereby allowing a broader range of products of small businesses to satisfy the Government need;
- (5) It establishes the Government order of precedence for requirements documents emphasizing performance-oriented documents and nongovernment standards rather than Federal/Military-unique standards thereby allowing a broader range of small businesses to participate in Government acquisitions;
- (6) It allows contracting officers the flexibility to use either the solicitation, evaluation and award procedures in the revised Part 12 for acquiring commercial items, or the procedures in Part 13, 14 or 15 if they are more streamlined and beneficial thereby allowing maximum flexibility for contracting with small businesses;
- (7) It allows the use of the streamlined terms and conditions for acquiring commercial items for every acquisition above the micropurchase threshold thereby allowing the maximum number

of small businesses to benefit from these procedures;

- (8) It requires that, except in unique circumstances, that the Government utilize the contractor's quality assurance system thereby allowing small businesses to utilize their own quality system when selling commercial items rather than a Government-specified system;
- (9) It requires that, when acquiring commercial items, the contracting officer may only use the solicitation provisions and contract clauses specifically established for acquiring commercial items and may only tailor those provisions and clauses when the customary practices in the market dictate the use of other terms and conditions; and
- (10) By significantly limiting the flow down of Government-unique terms and conditions to subcontractors at all levels thereby minimizing the burden on a significant number of small businesses.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, et seq. (FAR Case 94–790), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Acquisition of Commercial Items is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request are invited in a **Federal Register** notice which appears elsewhere in this issue.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Dated: February 17, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding in alphabetical order the definitions "Commercial component", "Commercial item", "Component", "Market research", and "Nondevelopmental item" to read as follows:

2.101 Definitions.

* * * * *

Commercial component means any component that is a commercial item.

Commercial item means—

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(1) Has been sold, leased, or licensed to the general public; or,

(2) Has been offered for sale, lease, or license to the general public;

- (b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (c) Any item that would satisfy a criterion expressed in paragraph (a) or (b) of this definition, but for—
- (1) Modifications of a type customarily available in the commercial marketplace; or
- (2) Minor modifications of a type not customarily available in the commercial market place made to meet Federal Government requirements. Such modifications are considered minor if the change does not significantly alter a commercial item's function or essential physical characteristics. Minor is not defined by the specific dollar value or percentage basis of the change;
- (d) Any combination of items meeting the requirements of paragraph (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;
- (e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph (a), (b), (c), or (d) of this definition, and if the source of such services—
- (1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
- (2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;