

1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Executive Order 12866*

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

*Executive Order 13132*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Participation by state or local law enforcement agencies is voluntary. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*Executive Order 12988*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

**List of Subjects in 28 CFR Part 65**

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 65 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

**PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE**

1. The authority citation for part 65 continues to read as follows:

**Authority:** The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

2. Section 65.84 is amended by adding paragraph (a)(4), to read as follows:

**§ 65.84 Procedures for the Attorney General when seeking State or local assistance.**

(a) \* \* \*

(4) The Attorney General may abbreviate or waive any of the training required pursuant to a written agreement regarding assistance under § 65.83(d) of this chapter, including contingency agreements, in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens is insufficient to protect public safety, public health, or national security. Such officers still would be required to adhere to applicable policies and standards of the Immigration and Naturalization Service. The decision to abbreviate or waive these training requirements is at the sole discretion of the Attorney General.

\* \* \* \* \*

Dated: February 20, 2003.

**John Ashcroft,**

*Attorney General.*

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 171**

**RIN 0790–AG95**

**Implementation of Wildfire Suppression Aircraft Transfer Act of 1996**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds regulations on the Implementation of Wildfire Suppression Aircraft Transfer Act of 1996 back into the Code of Federal Regulations. This rule was published as an Interim Final Rule on June 1, 1999 (64 FR 29227) and was inadvertently removed on October 25, 2001 (66 FR 53957). The Wildfire Suppression Aircraft Transfer Act of 1996 authorized the Department of Defense (DOD), during the period 1 October 1996 through 30 September 2000, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. Public Law 106–398 (114 STAT. 1654A–89) extended the expiration date from 30 September 2000 to 30 September 2005.

**EFFECTIVE DATE:** This rule is effective August 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Debra Bennett, 703–604–0098.

**SUPPLEMENTARY INFORMATION:** Public comment was taken on the Interim Final Rule. No comments were received.

**I. Background**

Subsection 2(a) of the Wildfire Suppression Aircraft Transfer Act of 1996, as amended, states that, notwithstanding subchapter II of chapter 5 of title 40, United States Code and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2005, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This rule prescribes such regulations.

**II. Administrative Requirements**

*A. Executive Order 12866*

It has been determined that 32 CFR part 171 is not a significant regulatory action. The rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

*B. Unfunded Mandates Reform Act*

It has been certified that 32 CFR part 171 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

*C. Regulatory Flexibility Act*

It has been determined that this rule is not subject to the Regulatory

Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule applies only to the sale of certain aircraft and aircraft parts to those entities that contract for the delivery of fire retardant by air in order to suppress wildfire. The U.S. Department of Agriculture provides the list of eligible entities that may bid on aircraft and aircraft parts.

#### D. Paperwork Reduction Act

It has been certified that 32 CFR part 171 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

#### E. Executive Order 13132

It has been certified that 32 CFR part 171 does not have federalism implications, as set forth in Executive Order 13132.

#### List of Subjects in 32 CFR Part 171

Aircraft, Fire prevention.

Accordingly, 32 CFR Part 171 is added to read as follows:

### PART 171—IMPLEMENTATION OF WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Sec.

- 171.1 Background and purpose.
- 171.2 Applicability.
- 171.3 Restrictions.
- 171.4 Qualifications.
- 171.5 Sale procedures.
- 171.6 Reutilization and transfer procedures.
- 171.7 Reporting requirements.
- 171.8 Expiration.

**Authority:** 10 U.S.C. 2576 note.

#### § 171.1 Background and purpose.

The Wildfire Suppression Aircraft Transfer Act of 1996 (the "Act"), as amended, allows the Department of Defense (DOD), during the period 1 October 1996 through 30 September 2005, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. This part implements the Act.

#### § 171.2 Applicability.

The regulations in this part apply to aircraft and aircraft parts determined to be DOD excess under the definition of the Federal Property Management Regulations (FPMR) and listed in Attachment 1 of Chapter 4 of DOD 4160.21–M as Category A aircraft authorized for commercial use.

#### § 171.3 Restrictions.

Aircraft and aircraft parts sold under the Act shall be used only for wildfire

suppression purposes and shall not be flown or removed from the U.S. unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression, or for other purposes jointly approved in advance, in writing, by the Secretary of Defense and the Secretary of Agriculture.

#### § 171.4 Qualifications.

The Secretary of Agriculture must certify in writing to the Secretary of Defense prior to sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Agriculture (USDA) must provide to the Defense Reutilization and Marketing Service (DRMS), in writing, a list of persons or entities eligible to bid under this Act, including expiration date of each USDA contract, and locations covered by the USDA contract.

(b) This requirement may not be delegated to the U.S. Forest Service (USFS).

#### § 171.5 Sale procedures.

Disposal of aircraft and aircraft parts must be in accordance with the provisions of Chapter 4 of DOD 4160.21–M, paragraph B2, and with other pertinent parts of this manual, with the following changes and additions:

(a) Sales shall be limited to the aircraft types listed in Attachment 1 of Chapter 4 of DOD 4160.21–M, and parts thereto (*i.e.*, no aircraft or aircraft parts listed as Munitions List Items on the State Department's U.S. Munitions List).

(b) Sales shall be made at fair market value (FMV), as determined by the Secretary of Defense and, to the extent practicable, on a competitive basis.

(1) DRMS must conduct sales utilizing FMVs that are either provided by the Military Services on the Disposal Turn-In Documents (DTIDs) or based on DRMS' professional expertise and knowledge of the market. Advice regarding FMV shall be provided to DRMS by USDA, as appropriate.

(2) If the high bid for a sale item does not equal or exceed the FMV, DRMS is vested with the discretion to reject all bids and reoffer the item:

(i) On another wildfire suppression sale if there is indication that reoffer may be successful, or,

(ii) With DLA concurrence, as normal surplus under the FPMR if there is no such indication.

(3) Disposition of proceeds from sale of aircraft under the Act will be as prescribed in guidance from the Under Secretary of Defense (Comptroller).

(c) Purchases shall certify that aircraft and aircraft parts will be used only in accordance with conditions stated in § 171.3.

(1) Sales solicitations will require bidders to submit end-use certificates with their bids, stating the intended use and proposed areas of operations.

(2) The completed end-use certificates shall be used in the bid evaluation process.

(d) Sales contracts shall include terms and conditions for verifying and enforcing the use of the aircraft and aircraft parts in accordance with provisions of this guidance.

(1) The DRMS Sales Contracting Officer (SCO) is responsible for verifying and enforcing the use of aircraft and aircraft parts in accordance with the terms and conditions of the sales contract.

(i) Sales contracts include provisions for on-site visits to the purchaser's place(s) of business and/or worksite(s).

(ii) Sales contracts require the purchaser to make available to the SCO, upon his or her request, all records concerning the use of aircraft and aircraft parts.

(2) USDA shall nominate in writing, and the SCO shall appoint, qualified Government employees (not contract employees) to serve as Contracting Officer's Representatives (CORs) for the purpose of conducting on-site verification and enforcement of the use of aircraft and aircraft parts for those purposes permitted by the sales contract.

(i) COR appointments must be in writing and must state the COR's duties, the limitations of the appointment, and the reporting requirements.

(ii) USDA bears all COR costs.

(iii) The SCO may reject any COR nominee for cause, or terminate any COR appointment for cause.

(3) Sales contracts require purchasers to comply with the Federal Aviation Agency (FAA) requirements in Chapter 4 of DOD 4160.21–M, paragraphs B 2 b (4)(d)2 through (40)(d)5.

(4) Sales contracts require purchasers to comply with the Flight Safety Critical Aircraft Parts regime in Chapter 4 of DOD 4160.21–M, paragraph B 26 c and d, and in Attachment 3 of Chapter 4 of DOD 4160.21–M.

(5) Sales contracts require purchasers to obtain the prior written consent of the SCO for resale of aircraft or aircraft parts purchased from DRMS under this Act. Resales are only permitted to other entities which, at time of resale, meet the qualifications required of initial purchasers. The SCO must seek, and USDA must provide, written assurance as to the acceptability of a prospective

repurchaser before approving resale. Resales will normally be approved for airtanker contracts which have completed their contracts, or which have had their contracts terminated, or which can provide other valid reasons for seeking resale which are acceptable to the SCO.

(i) If it is determined by the SCO that there is no interest in the aircraft or aircraft parts being offered for resale among entities deemed qualified repurchasers by USDA, the SCO may permit resale to entities outside the airtanker industry.

(ii) When an aircraft or aircraft parts are determined to be uneconomically repairable and suitable only for cannibalization and/or scrapping, the purchaser shall advise the SCO in writing and provide evidence in the form of a technical inspection document from a qualified FAA airframe and powerplant mechanic, or equivalent.

(iii) The policy outlined in paragraph (d)(5) of this section also applies to resales by repurchasers, and to all other manner of proposed title transfer (including, but no limited to, exchange and barter).

(iv) Sales of aircraft and aircraft parts under the Act are intended for principals only. Sales offerings will caution prospective purchasers not to buy with the expectation of acting as brokers, dealers, agents, or middlemen for other interested parties.

(6) The failure of a purchaser to comply with the sales contract terms and conditions may be cause for suspension and/or debarment, in addition to other administrative, contractual, civil, and criminal (including, but not limited to, 18 U.S.C. 1001) remedies which may be available to DOD.

(7) Aircraft parts will be made available in two ways:

(i) DRMS may, based on availability and demand, offer for sale under the Act whole unflyable aircraft, aircraft carcasses for cannibalization, or aircraft parts, utilizing substantially the same provisions outlined in paragraphs (a) through (d)(6) of this section for flyable aircraft.

(A) If USDA directs that DRMS set aside parts for sale under the Act, USDA must provide listings of parts required, by National Stock Number and Condition Code.

(B) Only qualified airtanker operators which fly the end-term aircraft will be allowed to purchase unflyable aircraft, aircraft carcasses, or aircraft parts applicable to that end-item.

(C) FMVs are not required for aircraft parts. DRMS must utilize historic prices

received for similar parts in making sale determinations.

(ii) As an agency of the Federal Government, USDA remains eligible to receive no-cost transfers of excess DOD aircraft parts under the FPMR.

#### **§ 171.6 Reutilization and transfer procedures.**

Prior to any sales effort, the Secretary of Defense shall, to the maximum extent practicable, consult with the Administrator of GSA, and with the heads of other Federal departments and agencies as appropriate, regarding reutilization and transfer requirements for aircraft and aircraft parts under this Act (see Chapter 4 of DOD 4160.21–M, paragraphs B 2 b (1) through B 2 b (3)).

(a) DOD reutilization:

(1) USDA shall notify Army, Navy, and/or Air Force, in writing, of their aircraft requirements as they arise, by aircraft type listed in Attachment 1 of Chapter 4 of DOD 4160.21–M.

(2) If a DOD requirement exists, the owning Military Service shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the DOD reutilization requirement. If USDA disputes the validity of the DOD requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L&MR/SCI) within thirty (30) days of its notice from the Military Service. ADUSD(L&MR/SCI) shall then resolve the dispute, in writing. The aircraft may not be issued until the dispute has been resolved.

(f) Federal agency transfer:

(1) The Military Service must report aircraft which survive reutilization screening to GSA Region 9 on a Standard Form 120. GSA shall screen for Federal agency transfer requirements in accordance with the FPMR.

(2) If a Federal agency requirement exists, GSA shall advise USDA, in writing, that it will be issuing the aircraft to satisfy the Federal agency requirement. If USDA disputes the validity of the Federal requirement, it shall send a written notice of dispute to the owning Military Service and ADUSD(L&MR/SCI) within thirty (30) days of its notice from the Military Service. ADUSD(L&MR/SCI) shall then resolve the dispute, in writing. The aircraft cannot be issued until the dispute has been resolved.

(c) The Military Services shall:

(1) Report aircraft which survive transfer screening and are ready for sale to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan 49017–3092. The Military Services must

use a DD Form 1348–1A, DTID, for this purpose.

(2) Transfer excess DOD aircraft to the Aerospace Maintenance and Regeneration Center (AMARC), Davis-Monthan AFB, AZ, and place the aircraft in an “excess” storage category while aircraft are undergoing screening and/or wildfire suppression aircraft sale. Aircraft shall not be available nor offered to airtanker operators from the Military Service’s airfield. The Military Service shall be responsible for the AMARC aircraft induction charges. The gaining customer will be liable for all AMARC withdrawal charges, to include any aircraft preparation required from AMARC. Sale of parts required for aircraft preparation is limited to those not required for the operational mission forces, and only if authorized by specific authority of the respective Military Service’s weapon system program manager.

#### **§ 171.7 Reporting requirements.**

Not later than 31 March 2000, the Secretary of Defense must submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report setting forth the following:

(a) The number and type of aircraft sold under this authority, and the terms and conditions under which the aircraft were sold.

(b) The persons or entities to which the aircraft were sold.

(c) An accounting of the current use of the aircraft sold.

(d) USDA must submit to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan, 49017–3092, not later than 1 February 2000, a report setting forth an accounting of the current disposition of all aircraft sold under the authority of the Act.

(e) DRMS must compile the report, based on sales contract files and (for the third report element) input from the USDA. The report must be provided to HQ DLA not later than 1 March 2000. HQ DLA shall forward the report to DOD not later than 15 March 2000.

#### **§ 171.8 Expiration.**

This part expires on 30 September 2005.

Dated: February 6, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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