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SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181, 114 Stat. 173) states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may sell, during the period beginning on the date of enactment of this Act and ending September 30, 2002, certain aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating. Section 740 states that, as soon as practicable after the date of enactment of the Act, the Secretary of Defense, in consultation with the Secretary of Transportation and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section. Section 1051 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, 116 Stat. 2648) provides for a four-year extension to this authority. This interim final rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR 207 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 priorities, or the principles set forth in this Executive Order.

B. Unfunded Mandates Reform Act

It has been certified that 32 CFR part 207 does not contain a Federal Mandate

that my result in the expenditure by State, local, and tribal governments, in 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 provide oil spill response services. The U.S. Department of Transportation 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 207 does not impose any reporting or record-keeping 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 207 does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 207

Aircraft, Oil spill, Oil dispersant.

■ Accordingly, 32 CFR Part 207 is added to read as follows:

PART 207—IMPLEMENTATION OF SECTION 740 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY AS AMENDED BY SECTION 1051 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Sec.

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Authority: Section 740 of Public Law 106–181, 114 STAT. 173 as amended by Section 1051 of Public Law 107–314, 116 STAT. 2648.

§ 207.1 Background and purpose.

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, as amended, allows the Department of Defense (DoD), during the period 4 April 2000 through 30 September 2006, to sell aircraft and aircraft parts to a person or entity that provides oil spill response services

(including the application of oil dispersants by air). This part implements that section.

§ 207.2 Applicability.

The sections in this part apply to the sale of aircraft and aircraft parts determined to be DoD excess under the definition of the Federal Property Management Regulations (FPMR) or the Federal Management Regulation (FMR), and listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997)¹ as Category A aircraft authorized for commercial use, to contractors providing oil spill response services.

§ 207.3 Restrictions.

(a) Aircraft and aircraft parts sold under the Act shall be used primarily for oil spill spotting, observation, and dispersant delivery, and may not have a secondary purpose that interferes with oil spill response efforts under an oil spill response plan. Use for a secondary purpose requires the prior written approval of the Secretary of Defense and the Secretary of Transportation, and a certificate from the Federal Aviation Administration, to be obtained in advance, for the proposed secondary use.

(b) Aircraft may not be flown outside of or removed from the U.S. except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for purposes that are jointly approved by the Secretary of Defense and the Secretary of Transportation.

(c) The DoD sale of aircraft and aircraft parts sold under the Act shall not extend past the time limits of the Act.

§ 207.4 Qualifications.

The Secretary of Transportation 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 perform oil spill response services by air, and that the overall system to be employed by the person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of participating in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Transportation (DoT) must provide to

¹ Copies may be obtained via Internet at <http://www.dla.mil/dlaps/dod/41602lm/guide.asp>.