

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.

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

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

Sec.

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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