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CAG–39.
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CAG–40.
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Docket No. CP83–364–003, Columbia Gas Transmission Corporation
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Docket No. CP87–407–001, National Fuel Gas Supply Corporation
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II. Electric Rate Matters

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M–4.
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Docket No. GP85–1–000, Transcontinental Gas Pipe Line Corporation v. Felmont Oil Corporation and Case-Pomeroy Oil Corporation
Docket No. GP85–10–000, Southern Natural Gas Company v. Pogo Producing Company
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Docket No. GP85–33–000, KN Energy Inc. v. Joe Gray, *et al.*.
Docket No. GP86–39–000, ANR Pipeline Company v. Northwestern Life Insurance Company
Docket No. GP86–55–000, ANR Pipeline Company v. Hamilton Brothers, *et al.*
Docket No. GP86–56–000, Cabot Pipeline Corporation
Docket No. GP87–13–000, ANR Pipeline Company v. Helmerich & Payne, Inc.
Docket No. GP87–21–000, ANR Pipeline Company v. Plains Resources, Inc.
Docket No. GP87–54–000, Transcontinental Gas Pipe Line Corporation
Docket No. GP88–12–000, Colorado Interstate Gas Company v. RJB Gas Pipeline Company
Docket No. GP88–15–000, ANR Pipeline Company v. Maguire Oil Company, *et al.*
Docket No. GP88–16–000, Colorado Interstate Gas Company v. Chemco, *et al.* Complaint raising NGPA Title I issues.
M–5.
Docket No. RM88–20–000, Five-Year Take-Or-Pay Make-Up Provisions In Natural Gas Producer-Pipelines Contracts. Notice of Proposed Rulemaking.
M–6.
Docket Nos. RI88–281–000 through RI88–284–000 and RI88–963–000 through RI88–982–000, Exxon Corporation
Docket No. RI88–1114–000 through RI88–1154–000, Arco Oil and Gas Company
Docket No. Docket Nos. RI88–1207–000 through RI88–1213–000, Samedan Oil Corporation. Order concerning requirement for five-year make up rights.

I. Pipeline Rate Matters

RP–1.
Docket No. IS87–14–000, *et al.*, Buckeye Pipe Line Company. Interlocutory appeal concerning disclosure of certain cost data.
RP–2.
Docket Nos. RP87–73–000 and RP87–73–002 through –004, Algonquin Gas Transmission Company. Contested settlement regarding Part 284 transportation.
RP–3.
(A) Docket No. GP88–11–000, Hadson Gas Systems, Inc. Declaratory order concerning "on behalf of" requirement in NGPA section 311.
(B) Docket No. CP88–286–000, Cascade Natural Gas Company v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas Systems, Inc., Llano, Inc., Corpus Christi Industrial Pipeline Company and Transco Energy Marketing Company. Complaint concerning transportation under NGPA section 311.
(C) Docket Nos. RP88–81–002, RP88–67–002 and RP88–175–000, Texas Eastern Transmission Corporation. Order concerning section 311 and interruptible transportation rates.
(D) Docket Nos. RP88–17–010 and –011, Southern Natural Gas Company. Order concerning priority of section 311 shippers who switch to blanket certificate service.

II Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15508 Filed 7–7–88; 9:49am]

BILLING CODE 6717–01–M

Corrections

Federal Register
Vol. 53, No. 132
Monday, July 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370 and 386

[Docket No. 80350-8050]

Export of Commodities on Board Country Group Q, W, Y, or Z Vessels and Aircraft

Correction

In proposed rule document 88-13946 originally appearing on page 23228 in the issue of Tuesday, June 21, 1988, and corrected on page 24551 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24551, in the first column, the CFR line was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[OPP-00264; FRL 3407-5]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14718 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24666, in the third column, in the right-hand side of the table, "185.3350" should read "185.3550".

2. On page 24667, in the third column, under Part 185, Subpart B, in section 185.800, the second line "1-[1H-1,2,4-triazol-1-yl]-2-butanone" should read "[1*H*-1,2,4-triazol-1-yl]-2-butanone".

3. On page 24668, in the first column, under Part 185, Subpart B, in section 185.5450, the second line "Tetrabromolethyl)]-2,2-" should read "Tetrabromoethyl)]-2,2-".

4. On page 24669, in the first column, under Part 186, Subpart B, in section 186.3400, the second line "alpha-cyano-3-phenoxbenzyl(R)-2-[2" should read "alpha-cyano-3-phenoxybenzyl(*R*)-2-[2".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-00263; FRL 3407-4]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14717 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24666, in the second column, the bold faced heading should read as follows:

"PARTS 193 AND 561 [REDESIGNATED AS 40 CFR PARTS 185 and 186]"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-22677]

Arizona; Exchange of Public and Private Lands in La Paz and Mohave Counties

Correction

In notice document 88-8130 beginning on page 12474 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12474, in the first column, in the land description, under T. 15 N., R. 19 W., under Sec. 23, "E½W½" should read "E⅓W⅔"

BILLING CODE 1505-01-D

federal register

Monday
July 11, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 etc.
Cockpit Voice Recorders (CVR) and Flight Recorders; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, and 135

[Docket No. 25530; Amdt. Nos. 23-35, 25-65, 27-22, 29-25, 91-204, 121-197, 125-10, 135-26]

[RIN 2120-AC48]

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for additional comments (Part 91 requirements).

SUMMARY: The FAA amends its regulations to require digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as in selected aircraft operated in general aviation. The amendments are in response to legislation which mandates the FAA to amend its flight recorder and CVR requirements in accordance with recommendations from the National Transportation Safety Board (NTSB). The intent of this rulemaking is to provide more information to accident investigators in determining the causes of accidents and the measures needed to correct the causes. In addition, the FAA also requests additional comments regarding the general aviation requirements.

DATES: Effective date: October 11, 1988. Comments on the Part 91 requirements must be submitted on or before October 11, 1988. Compliance Date: October 11, 1991.

ADDRESSES: Comments on the Part 91 requirements should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25530, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25530. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Technical Analysis Branch [AWS-120], Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking on flight recorder and CVR requirements on February 12, 1988 [Notice No. 88-1, 53 FR 4314]. The proposed rule was primarily based on recommendations from the NTSB issued on June 19, 1987. FAA rulemaking on these requirements was mandated by legislation on December 22, 1987, in the Appropriations Act, 1988, [Pub. L. 100-202] and on December 30, 1987, under the Airport and Airway Safety and Capacity Expansion Act of 1987, Title III, Section 303(c) [Pub. L. 100-223].

The Appropriations Act required the FAA to expand existing CVR and flight recorder requirements "to smaller sizes of commuter air carrier aircraft" and to require CVR and flight recorder "retrofits on certain types of existing commuter air carrier aircraft. . . ."

The Airport and Airway Safety and Capacity Expansion Act required the FAA to initiate rulemaking "to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board."

The NTSB issued its safety recommendations in response to a number of significant events which had occurred since its previous recommendations issued in August 1982. These events were FAA's flight recorder and CVR rule changes issued March 25, 1987; the technological development of solid-state flight data recorders (SFDR); the continued growth of the commuter air carrier industry; revisions to Part 23 of the Federal Aviation Regulations (FAR) (14 CFR Part 23) which defined a commuter category airplane and established certification requirements for commuter category airplanes; and the adoption by the International Civil Aviation Organization (ICAO) of revised flight recorder and CVR standards.

The FAA used the NTSB recommendations of June 19, 1987, as an appropriate background to discuss extending and updating its flight recorder and CVR rules. The rules on CVR and flight recorders had been last amended March 25, 1987 [Amendment Nos. 91-199, 121-191, 125-8, 135-23; 52 FR 9622]. In simplified terms, the 1987 amendments required that FAR Part 121 operators update certain of their airplanes over a specified time period with digital flight recorders that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture. Parts 91 and 125 were also amended by requiring that any operator who has installed approved flight recorders and approved CVRs shall keep the recorded information for at least 60 days after an accident or occurrence requiring immediate notification to the NTSB. The 1987 amendments extended Part 135 voice recorder requirements which applied to any turbojet airplane having a passenger seating configuration of 10 seats or more to any newly manufactured multiengine, turbine-powered airplane that was certificated to carry six or more passengers and required to have two pilots. The 1987 amendments did not require flight recorders for operations conducted under Part 135. They did not require voice recorders or flight recorders for operations conducted under Parts 91 and 125. They did not require flight recorders for helicopters.

The NTSB wanted broader application of the requirements than those established in the 1987 amendments, and the NTSB recommended that the requirements, including parameter requirements, be updated to cover technological improvements in CVR and flight recorder equipment. Through the aforementioned legislation, Congress agreed.

As stated in the preamble to the proposed rule and in the NTSB recommendations, the need for updated and expanded regulations on the installation and use of flight recorders and voice recorders is twofold. First, technological advances in cockpit equipment have greatly increased the potential for accumulating information on the flight characteristics of an aircraft at the time of an incident or accident. However, unless aircraft equipped with new electronic display systems (i.e., "glass cockpits") are also equipped with flight recorders that can capture the flight information and from which investigators can retrieve that information, the information is lost. Therefore, a major objective of this rulemaking is to upgrade the parameters and flight recorder and voice recorder standards to accommodate the most sophisticated systems now being installed in aircraft. Secondly, previous flight recorder and voice recorder requirements have not been applied to significant sectors of air transportation operations.

In recent years the commuter air carrier fleet has grown substantially and its growth is expected to continue. The 1987 annual report of the Regional Airline Association (whose membership consists primarily of commuter air carriers) estimates that more than 61 million passengers will be carried by

members of that association in 1997. The growth in commuter air transportation has resulted in newly manufactured aircraft designed specifically for the commuter market. While these new airplanes have a take-off weight in excess of 12,500 pounds, they often have a seating configuration of less than 30 passenger seats and payloads of 7,500 pounds or less, which means they are operated under Part 135. Until now Part 135 has had no flight recorder requirements. Therefore, vital accident data from commuter airline accidents has not been avaiable.

The NTSB safety recommendation cites several recent commuter air carrier accidents in which investigations revealed a lack of information that would have been pertinent to determining the causes. Although the investigations produced a number of safety recommendations based on evidence of potentially hazardous conditions and practices, the specific flight crew actions or inactions, environmental conditions or equipment failures that may have caused the accidents could not be positively determined. Therefore, the NTSB's safety recommendations towards preventing recurrence could not be as definitive as possible. The NTSB has indicated that in these accidents if flight recorder information had been available, specific deficiencies in flight crewmembers' performance or mechanical failures or malfunctions could have been determined. Without flight recorder information, accident investigators are severely limited in definitively assessing causes. Therefore, the FAA has added flight recorder requirements to Part 135 and extended the voice recorder requirements in Part 135 to specific types of airplanes and rotorcraft.

Part 91 and Part 125 operations have had neither flight nor voice recorder requirements. The lack of information poses the same problem to investigators as in commuter operations. Therefore, this rulemaking extends flight recorder and voice recorder requirements to specific types of airplanes and rotorcraft being operated under Part 91 and specific types of airplanes operated under Part 125.

In addition to the above, the NTSB recommended that all newly manufactured aircraft and new cockpit voice recorder installations be designed to allow for uninterrupted recording from boom or mask microphones and headphones for each flight crewmember station and from an area microphone on dedicated channels of the CVR. The performance of CVR installations of this kind where the audio signal of each crewmember station is continuously recorded on a dedicated channel provides much clearer recorded information for investigators than the standard cockpit area microphone (CAM). Therefore, this rulemaking includes amendments to Parts 23, 25, 121, 125, and 135, to require the NTSB recommended capability on newly manufactured aircraft and on aircraft on which new cockpit voice recorders are installed and to require the use of that capacity where it already exists.

In the interest of safety and in accordance with the Congressional mandate and NTSB recommendations, the FAA is extending and updating its regulations in flight recorders and voice recorders. This action is consistent with the requirements of section 601(b) of the FA Act that the FAA perform its powers and duties "* * * in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents * * *."

Overall this rulemaking accomplishes the following significant changes:

(1) It establishes flight recorder requirements for certain aircraft operated under Parts 91, 125, and 135.

(2) It establishes cockpit voice recorder requirements for certain aircraft operated under Parts 91 and 125, and extends and revises voice recorder requirements under Part 135.

(3) It upgrades the requirements and parameters for flight recorders to the level of the most sophisticated systems installed in aircraft. The new parameters and requirements affect certain aircraft operated under Parts 121, 125, and 135.

(4) It requires uninterrupted sound recording capability in cockpit voice recorders under Parts 23 and 25 and specifies use of this capacity under the operating rules of Parts 121, 125, and 135.

(5) It revises CVR and flight recorder airworthiness standards in Part 25; establishes flight recorder installation requirements in Parts 23, 27, and 29; and establishes CVR requirements in Parts 23 and 27.

Comment Discussion

The FAA received 52 comments on the NPRM. Thirty-one comments opposed the proposed rule; nine supported it; two supported it with reservations. The rest of the comments did not express opposition or support. At least 19 comments addressed specific issues raised by the proposed rule. The categories of commenters included airport authorities, state governments, operators of airplanes and helicopters, manufacturers, and foreign air transportation companies. Of the associations representing air transportation interest groups, comments were received from the Air Line Pilots Association (ALPA), the Air Transport Association (ATA), General Aviation Manufacturers Association (GAMA), Airport Operators Council International, the National Air Transportation Association (NATA), and the Regional Airlines Association (RAA). Commenters who opposed the rule were primarily operators conducting operations under Part 135 (or Part 91), particularly operators of helicopters, as well as ATA and NATA. Categories of commenters supporting the rule were manufacturers, state governments, and airport authorities, the National Transportation Safety Board (NTSB), and the RAA.

Several commenters presented recommendations and raised concerns over specific requirements in the rule. The following categories of issues were raised and are discussed separately below:

(1) Part 121 requirements

(2) Part 91 and Part 135 requirements

(3) Specific technical requirements

(4) Comments beyond the Scope of the Notice.

Part 121 Requirements

The Air Transport Association (ATA) on behalf of its member airlines submitted a number of objections to the proposed changes in Part 121 and in some cases to the proposed parallel changes in Part 25. Several of ATA's objections were also raised by other commenters. Overall opposition to the proposed changes was based on two general arguments. First, the ATA argued that the Congressional language cited in the NPRM as a primary basis for the proposed changes did not identify Part 121 air carriers. Second, they argued that "the NTSB and FAA have not adequately justified the Part 121 proposals for further expansion of flight recorder requirements beyond those in Amendment 121–91." ATA also stated that the 45-day comment period was too short for its member airlines to "provide the type of technical and economic impact information needed to develop final credible technical and cost analyses," and recommended that the FAA withdraw and reconsider the proposed amendments to Parts 25 and 121.

ATA and others specifically commented on technical concerns with Part 121 proposals. Comments of a purely technical nature are dealt with elsewhere in this preamble. The

remaining Part 121 comments (mostly from ATA) are summarized as follows:

- Of the six new developments cited by FAA in Notice 88–1 as justification for the proposed additional requirements, none justify the proposed Part 121 changes.
- Notice 88–1 did not include any discussion on "major rule", "significant rule" requirements under Executive Order 12291 and DOT policy, respectively.
- There are significant differences between the FAA/NTSB proposed flight recorder parameters and the ICAO standards which ATA says are "recommended standards only" which are "in the process of being revised."
- Adoption of 32 parameter flight recorder requirements for newly manufactured airplanes rather than last year's requirement for 17 parameter flight recorder for newly manufactured airplanes will create an unnecessary administrative and logistics burden.
- The proposed additional parameters could exceed the capacity of digital flight data acquisition units "denying airline use of flight recorder information for routine maintenance and operations analyses, some of which are required by the FAA."
- The relationship of the proposed requirements to the rules adopted in Amendment 121–191 is confusing and potentially disruptive and costly to airline operations especially when considered with other FAA requirements already adopted or under consideration (e.g., windshear, TCAS requirements). Related to this ATA comment was a comment by McDonnell Douglas Aircraft Co. which indicated that changing "regulatory requirements on systems such as flight recorders on an annual basis * * * makes planning very difficult and expensive."

ATA offered an alternative to the FAA proposal. ATA suggests that for a retrofit, additional parameters be required only when the airplane is already equipped with "an ARINC 717 digital flight data acquisition unit (DFDAU) with the ARINC buses containing the (a number to be later determined) additional parameters *already* converted to it." For newly manufactured airplanes ATA would follow the same pattern except that additional parameters above the 17 parameters of Amendment 121–191 would be recorded "on a space availability basis without impacting existing airline recording programs * * *."

The FAA's Response: The FAA does not agree with ATA's interpretation of the Congressional mandate. Given the overall legislative history of Public Law 100–223, FAA believes that the Congressional intent is to ensure safety by making available to the NTSB whatever data is necessary for accident investigation if acquiring that data is technologically feasible. Congress stated this intent by ordering the FAA "to initiate a rulemaking proceeding to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft *and other aircraft, commensurate with the recommendations of the National Transportation Safety Board."* [Emphasis supplied.] In its June 19, 1987, letter to the FAA, the NTSB stated its requirements which covered 14 CFR Parts 23, 25, 91, 121, and 135. FAA proposed to meet those requirements in Notice 88–1, as directed by Congress. Comments submitted by the Board did not indicate that the proposed Part 121 requirements exceeded the bounds of what the Board determines as necessary information for conducting accurate accident investigations.

ATA is correct that the normal paragraph addressing "major rule" under Executive Order 12291 and "significant rule" under DOT policy was omitted—inadvertently—from the NPRM. Nonetheless, the potential costs were fully discussed in the preamble (and in a full economic evaluation in the docket) and the substance of that discussion indicated that the proposed rule would not be considered major under the Executive Order. Further, the overall preamble discussion made it clear that the proposals were significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

The 1987 Amendments to Part 121 did not increase the parameters listed in Appendix B of that part. NTSB has stated in its recent recommendations that Appendix B should be updated to expand the parameters list and define new parameters, improved accuracies, ranges, and sampling intervals so that flight recorder standards are consistent with the capabilities of the most advanced electronic display systems. As stated by NTSB, "The introduction of the Airbus A320 with its fly-by-wire technology will present new challenges in accident investigation that will require post accident information of the quantity and quality that goes far beyond the current minimum standards of Appendix B."

In response to the NTSB recommendations, this rulemaking updates the parameter list to meet the requirements of the most advanced cockpit systems if installed and to require the best available flight recorder technology for newly manufactured airplanes operated under Part 121. The requirement for flight recorder parameters in addition to the 17 required by the 1987 amendments applies only to aircraft manufactured after October 11, 1991, or those already equipped with specific ARINC equipment. This allows adequate time for the required installation of the latest flight recorder equipment as part of the manufacturing process which should cause no manufacturing delay and only minimal cost.

While ATA describes the proposed tie-in with existing ARINC 429 equipment (or an equivalent) as a retrofit requirement, it is not the normal mandatory type retrofit requirement applicable to all or certain specified airplanes operated under Part 121 or Part 135. The final rule clarifies the FAA intent in this regard (discussed under Technical Comments portion of this preamble) and as adopted the rule will apply only where stated equipment is already installed in an airplane and where data is readily available so that it can be accessed with virtually no burden on Part 121 operators, either in lost airplane time or other costs.

In consideration of other objections raised by ATA, that extending the parameters from 17 to 32 (or higher, by ATA's count) is too great a change too soon, that Part 121 operators are being required to make other equipment changes at the same time, and that the proposed parameters were not consistent with those recommended by ICAO, and in consideration of the comments submitted by the NTSB, the FAA has done the following: (1) Extended the effective date of the requirements to 3 years instead of the proposed 2 years; and (2) reduced the number of mandatory parametes to 28 and made the other highly desired parameters optional where feasible.

Parts 91 and 135 Requirements

Except for the Regional Airline Association's agreement with most of the proposed Part 135 amendments, virtually all of the operators who commented on these requirements opposed them. Specific technical comments are discussed below. Typical of the more general opposing comments was the comment of the North Dakota Aviation Council which stated that the FAA had "expanded the intent of Congress" in proposing CVR and flight recorder requirements for certain general aviation operations under Part 91 and on-demand operations under Part 135. The National Air Transportation Association (NATA) also accused the FAA of expanding the Congressional

mandate and further stated that nowhere in the proposal "can a case be made for a quantitative increase in safety benefit for requiring CVR's in the types of aircraft typically operated in the Part 135 charter fleet."

One commenter pointed out that a 2-year compliance period for the installation of CVR's is inadequate. From the commenter's viewpoint, most of the affected aircraft require a "heavy" inspection only every 5 to 6 years. It is during this inspection that it would be most appropriate to install the CVR.

Several commenters asserted that where an aircraft is newly manufactured to a type design of long standing, the attributes and operational history are already well known and it is unlikely that the NTSB will obtain the kind of information it seeks from accident investigations. These commenters also asserted that the past safety record did not justify the new requirements and that because of the nature of on-demand and general aviation operations the costs are disproportionate since they cannot be spread out over thousands of flight hours or hundreds of thousands of passengers boarded each year.

Some of the most vigorous comments adverse to the proposed requirements were received from helicopter operators. They, too, thought that the FAA had exceeded the Congressional mandate, that none of the cited accidents or other justification involved helicopters, and that the potential costs for helicopter operators far exceeded any potential benefits to the overall aviation industry.

The Regional Airlines Association stated that there is no justification for requiring retrofit of the 32-parameter flight data recorder on 20–30 seat airplanes under Part 135 when no such retrofit requirement was proposed for Part 121. RAA indicated that while the costs would be substantial, it could not provide specific estimates because they would vary from airplane to airplane depending on the amount of wiring already installed in the airplane.

The FAA's Response: As discussed previously, the FAA does not agree that it has exceeded the Congressional mandate or that the new CVR and flight recorder requirements for Part 91 operators and for non-scheduled Part 135 operators cannot be justified. Accident investigators face the same problems in determining the causes of accidents, whether the accidents involve scheduled commuter operations, nonscheduled operations, or general aviation operations. New airplanes used in all of these operations employ state-of-the-art avionics and control systems; yet operators have not been required under Parts 91 and 135 to install flight recorders which would provide data to accident investigators. Post accident documentation, such as switch and instrument positions, that have proven vital in past investigations is not available with the new systems, thus increasing the difficulty in determining the cause of an accident.

Furthermore, many airplanes of the same type are used in Part 91 operations and in Part 135 operations. Therefore, any accident data collected from an accident of one of these airplane types has application for operations conducted under both parts. Also, an individual airplane may be used in operations conducted under both parts. If an airplane is used in operations under both parts, the Part 91 requirements would not be as burdensome as suggested by some commenters since in many cases the airplane would already be subject to Part 135 requirements. Also, because of the potential for use of an airplane type under both Parts 91 and 135, the used aircraft market ultimately benefits when airplanes are equipped so that they can move back and forth between different operating rules.

Accidents cited in the NPRM (which included operations conducted under Parts 91 and 135) illustrate the problems accident investigators encounter when aircraft are not equipped with flight or voice recorders. In such cases, investigators rely on interviews with fellow crewmembers, training records, FAA surveillance, cockpit standardization, and additional operational factors. Although the cause of an accident may be determined through these investigative efforts, the process may be long and costly in terms of lives and property. Time may be critical, particularly if the cause of an accident is an airworthiness factor.

The rule does recognize differences in accordance with the seating capacity of the aircraft. In Part 91, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10 or more manufactured after October 11, 1991. The flight recorders must have 17 required parameters for airplanes and 22 for rotorcraft. In Part 135, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10–19 seats that are brought onto the U.S. register after October 11, 1991. The flight recorders must have 17 parameters for airplanes and 22 for rotorcraft. In effect, Part 91 and Part 135 flight recorder requirements for these size aircraft apply only to newly manufactured aircraft. No retrofit of existing U.S. registered aircraft of this size is required for flight recorders.

In Part 135, airplanes having a passenger seating configuration of 20 to 30 seats and rotorcraft having a passenger seating configuration of 20 or more seats must be equipped with flight recorders after October 11, 1991. This is a retrofit as well as a requirement for newly manufactured aircraft. The NTSB in its comment agreed that it might be impractical to require 20–30 passenger airplanes to be retrofitted with 32 parameter flight data recorders, as proposed. In light of all the information received, the FAA has changed § 135.152(b) to require that affected aircraft be retrofitted with either 11-parameter or 17-parameter flight recorders (depending on the type certification date), except that those airplanes manufactured after October 11, 1991, must be upgraded to 28 parameters.

Clearly the flight recorder requirements for the larger aircraft being operated under Part 135 are more stringent than those for the smaller aircraft. Most, if not all, nonscheduled operations conducted under Part 135 use aircraft with a passenger seating configuration of less than 20 seats. Such aircraft are not required to be retrofitted with flight recorders. However, they are required to be equipped with voice recorders. Since the cost of installing voice recorders is substantially less than that of flight recorders, the FAA does not expect the voice recorder requirements to impose a significant burden on small operators.

With regard to comments about the inadequacy of a 2-year period to reasonably accomplish the Part 91 retrofit of CVR's, the FAA concurs. Accordingly, the FAA has provided a 3-year period to effect this retrofit, recognizing, however, that some operators may not conduct a "heavy" inspection or overhaul in this period, the regulatory language provides that the Administrator, for good cause, may authorize extension of the compliance time to accommodate such maintenance schedules. A request for extension of the compliance time must be accompanied by a demonstration of good cause and must specify a date for the operator's completion of the retrofit of the CVR.

Technical Comments

A number of commenters provided detailed comments on the technical aspects of the new rules. Any such comments that address the substance of the rule are discussed below. Comments that point out printing errors, suggest non-substantive minor language

changes, or suggest changes to make the rules internally consistent were considered and the appropriate changes were made. However those changes are not discussed in detail.

A number of commenters pointed out that, although the preamble to Notice 88–1 specifically discusses a new requirement for "hot mic" recording, the rule language specifies types of microphones but does not contain a "hot mic" requirement. Suggestions for appropriate rule language were provided. To correct this omission in the final rule, §§ 23.1457(c)(5) and 25.1457(c)(5) have been added to make it clear that all sounds received by the microphone must be recorded without interruption. In addition, §§ 121.359(e), 125.227(e), and 135.151(c) have been changed to clarify that §§ 23.1457(c)(5) and 25.1457(c)(5) apply to airplanes manufactured after October 11, 1991, and to airplanes on which a new cockpit voice recorder has been installed after October 11, 1991. One commenter stated that proposed § 25.1459(e) is unnecessary. This new paragraph requires evaluation of novel or unique design or operational characteristics of new aircraft to determine if additional parameters should be recorded on the flight recorder for that aircraft. The commenter is correct that additional parameters could be proposed as Special Conditions for that aircraft. However, the language is being inserted into § 25.1459 as a rule of general applicability so that as part of a review of airworthiness requirements for initial certification, a review to assess the need for additional parameters will be conducted.

A commenter pointed out that, while proposed § 91.35(b)(1) requires aircraft manufactured after one year after the effective date to be prewired to accept any appropriate flight recorder, the proposed language does not specify the date by which such aircraft must be equipped with flight recorders. The FAA has reviewed proposed § 91.35(b)(1) and a parallel requirement proposed in § 135.152(a) and has concluded that, even though the requirement might provide an economic incentive to manufacturers to begin equipping airplanes to accept flight recorders, the safety benefit comes from the installation of the recorders. Therefore proposed §§ 91.35(b)(1) and 135.152(a) have not been included in the final rule.

One commenter questioned the justification for applying the proposed rules to helicopters. This commenter proposed that if CVR and flight recorder requirements are applied to any helicopters, they should be applied only to large helicopters. The FAA does not agree that the large/small dividing line (small—12,500 pounds or less maximum certificated takeoff weight) is the appropriate determining factor for requiring or not requiring CVR and flight recorder equipment. As with airplanes, the FAA considers passenger seating configuration a more meaningful measure of the need for requiring safety information collection devices such as CVR and flight recorders.

A number of commenters stated that the language of proposed §§ 121.343(e) and 125.225(c) does not accomplish the objective stated in the preamble to Notice 88–1. Some commenters stated that the proposed rule language "equipped with an ARINC 429 digital data bus" is itself inaccurate. Others stated that even if an airplane does have the ARINC 429 equipment, that equipment may be used in such a way that it would not, without a major retrofit, provide access to the information in the additional parameters as suggested in the NPRM. The FAA's intent in following through on this NTSB recommendation was to take advantage of the full capability of more advanced technology equipment when that equipment is already installed. There is no intent to require any retrofitting costs beyond the minimal cost of accessing readily available data. The final rule has been redrafted so that it clearly carries out the original intent. It now states that when a large airplane is equipped with a digital data bus and ARINC digital flight data acquisition unit or equivalent the airplane must be "equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium." The rule, as adopted, also clarifies that only those parameters "available on the digital data bus" must be recorded.

As mentioned previously, the ATA and several other commenters questioned the number of new parameters that would be required under Appendix B to Part 121 for newly manufactured aircraft. Commenters suggested that there were inconsistencies between the FAA's proposed parameters, NTSB's recommended parameters, and ICAO recommended standards. Commenters also indicated that to meet the FAA proposed requirement would in many cases overload the system so that operators would have to sacrifice present usage of flight recorder systems to provide them with important safety-related, day-to-day operating information. At the same time some commenters suggested additional parameters, not proposed, that normally would be considered beyond the scope of this rulemaking. In order to establish standards that most effectively use flight recorder capability, the FAA has decided to require 28 mandatory parameters under Part 121, Appendix B, Part 125, Appendix D, and Part 135, Appendix D for newly manufactured aircraft. The remaining parameters will be optional, to be accessed if the operator's system has adequate capacity. The non-mandatory parameters include additional parameters that were not proposed, such as TCAS, which were added at the recommendation of the NTSB.

The NTSB and other commenters raised questions concerning the adequacy of existing Technical Standard Orders (TSOs) for both cockpit noise recorders and flight recorders. While TSOs are necessarily relevant, they have not been made a part of this rulemaking. As part of its ongoing TSO program, the FAA will revise TSOs when changes are needed to upgrade the specifications for equipment required by this final rule. These efforts are already underway and are being coordinated with the Society of Automotive Engineers (SAE) and European Organization for Civil Aviation Electronics (EUROCAE).

Some commenters pointed out that the minimum 15-minute duration period for cockpit voice recorders proposed for § 91.35(e) is not consistent with the standard agreed to in Europe (EUROCAE). Others noted that proposed §§ 91.35(b)(2) and 135.152(b) would allow a flight data recorder with an 8-hour duration while the international community is considering a 10-hour minimum to be consistent with the current ICAO recommended practice. While the FAA recognizes that both proposed limits are less stringent than those mentioned by commenters (and less stringent than FAA's own minimums under Part 121), the FAA's intent is to apply CVR and flight recorder solid state technology and CVR and flight recorder requirements to general aviation operations at minimal cost. Since the technology is already available, the FAA anticipates that reasonably priced CVR and flight recorder equipment for general aviation aircraft will be available for installation well within the 3-year compliance period allowed in this rule.

One commenter objected to the requirement in proposed Appendix E to Part 135 that a rotorcraft with over 20 passengers have flight recorders with a 24-hour recording capacity. The

commenter stated that most rotorcraft operate essentially short-haul journeys and that, therefore, an 8 to 10-hour capacity should be adequate. The FAA agrees, but no change is needed since Appendix E does not require a 24-hour recording capacity. In Appendix E, the recorded time is not related to the time of individual flights, but to a 24-hour clock.

Several commenters objected to the requirements in §§ 121.359(e), 125.227(e), and 135.151(c) that when operating aircraft equipped to record uninterrupted audio signals received by a boom or mask microphone, flight crewmembers must use the boom microphone below 18,000 feet. Specific objections were as follows:

(1) The requirement would make better sense elsewhere in Part 121 where it would clarify that the boom microphone rather than the handheld microphone should be used when cockpit workload is high.

(2) Flight crewmembers might not be able to determine whether the CVR in a particular aircraft has a "hot mic" feature.

(3) It requires the boom microphone even though the smoke/oxygen mask microphone might be more appropriate.

(4) It would have an impact on those aircraft which have a separate hand microphone for the public address/cabin interphone systems.

(5) Hot boom microphones are needed since acceptable recordings are provided by directional fixed mikes and high quality area mikes.

(6) The requirement could affect flight safety by causing fatigue on flight schedules with successive short stops.

The FAA does not agree that area microphones provide recordings that are equal to boom microphones. Boom or mask microphones with uninterrupted signals produce the most audible recordings. The purpose of the requirement is to require boom microphones (or smoke/oxygen mask microphones if needed) at times when the continual recorded information would be most useful if an accident or incident occurred. Flight crewmembers should be able to tell whether CVR in a particular aircraft has a "hot mic" feature. The use of the boom microphone is not likely to be a cause of flight crewmember fatigue in short hop schedules. The causes of such fatigue are well documented—airport congestion, low altitude weather, the number of arrivals and takeoffs—factors which create a need for the use of hot mics. The requirement should not affect public address/cabin interphone communications which have a dedicated channel.

GAMA stated that except for the longitudinal acceleration and stabilizer trim position or pitch central position parameters, proposed Appendix D of Part 91 and Appendix B of Part 135 are consistent with Aerospace Standard AS 8039 which was produced by a Society of Automotive Engineers (SAE) committee formed at the suggestion of the FAA and other government agencies. The committee had concluded that the value of the potential information from the two excepted parameters would not justify the cost. GAMA also pointed out that the recommendation of the SAE committee had been unanimous except for the NTSB representative. The FAA has determined that these two parameters are justified, since the NTSB in its June 19, 1987, letter stated a need for the information that would be provided by these additional parameters.

One commenter objected to the requirement in § 91.35(d)(2) that the CVR be operating during the checklist action. The requirement would pose a problem for small aircraft that have no external source of power and that would have to rely on battery power to operate the CVR. The commenter stated that for some aircraft this would be impractical. The FAA does not agree that the requirement would be impractical. It is essential that checklist actions be recorded since in the event of an accident, investigators must determine if the checklist action was properly conducted. Determining the adequacy of the power source is a certification procedure and thus the manufacturer or operator would have to show during the certification process that CVR operation would not interfere with emergency or other power needs. This showing should not impose any significant additional burden since airplanes of the size to which this requirement applies would either operate off of an auxiliary power source or have adequate backup power available.

One commenter objected to the "Resolution Readout" column which was added to Appendix B—Airplane Flight Recorder Specifications. According to the commenter, these specifications increase resolution requirements beyond the capability of equipment currently being used. The commenter states that "Compliance with the higher orders of resolution will require more complicated software in the recorder system and in the readout equipment, effectively making all current equipment obsolete."

The resolution readout column is included to make the FAA flight recorder appendices consistent with the proposed ICAO recommended standard. However, the resolution readout requirement is intended only for flight recorder equipment installed on newly manufactured airplanes. The final rule has been changed to make this clear by including a footnote to this column in each flight recorder appendix. Also, the new TSO for flight recorder standards will contain resolution requirements.

Comments Beyond the Scope of the Notice

The FAA received several comments which were recommendations or suggestions for considering alternatives or additions to the proposal. Some of these were requests that are beyond the scope of the notice while others appeared to be primarily informational. These types of comments are summarized below and responded to.

Two commenters requested that the rulemaking update maintenance requirements to cover flight recorders and cockpit voice recorders. The FAA does not consider that a specific amendment is needed in this regard because an air carrier's continued airworthiness maintenance program will automatically cover such equipment.

One commenter requested that the cockpit voice recorder requirements under Parts 91 and 135 include a requirement for underwater locator beacons to aid retrieval of the recorders from lakes and rivers. This requirement already exists for aircraft certification requirements.

One commenter requested that the rule include relief for continued aircraft operation if a flight recorder or CVR becomes inoperative. The commenter was concerned that a time lapse may occur between the revisions to the Master Minimum Equipment List (MMEL) and the compliance date, also that MMEL lists may vary depending on who has responsibility for the particular aircraft MMEL. This rulemaking does not deal with minimum equipment lists and the problem suggested by the commenter, if necessary, would be handled under normal MMEL procedures.

A comment from a manufacturer stated that the NPRM implied "different sets of data between engine manufacturers." The commenter suggested additional engine information to be recorded for each engine:

N2—High Rotor Speed
EGT—Exhaust Gas Temperature
TLA—Throttle Lever Position
N1—Low Rotor Speed
WF—Fuel Low
CLA—Fuel Cutoff Lever Position

The commenter also suggested recording maintenance and status words from the electronic engine controls.

The FAA encourages including these additional parameters, as appropriate, but is not mandating them.

Construcciones Aeronauticas, S.A. (CASA) objected to the reference in the NPRM to two CASA C–212 accidents that occurred in 1987. CASA stated that some facts about the accident were incorrect in the NPRM and that the FAA should publish a correction. The FAA has checked the NTSB June 1988 recommendation letter and has determined that the NPRM accurately reflected the facts as they were stated by the NTSB in that letter.

A manufacturer of recorder equipment requested that the FAA consider the manufacturer's new type of cockpit recorder. Information on the recorder was submitted with the comment. The comment does not require an FAA response.

The Air Line Pilots Association (ALPA) comment, which was generally supportive of the proposal, requested a change in § 121.343(e) which requires that required flight recorders "must be operated continually from the instant the airplane begins to takeoff roll until it has completed the landing roll at an airport." ALPA stated that this provision "hampers the collection of valuable data which can be used in evaluating the DFDR data." ALPA requested that the language be changed to require recorder operation to begin at the time of engine start to the time of engine shutdown at the end of the flight in order to provide "steady state" information. Two other commenters also requested that recording cover the ground operation phase.

No revisions to § 121.343(e) were requested by NTSB or included in the proposed rule. The present Part 121 requirement was simply carried over to Part 91 and Part 135 requirements. A revision of the requirement is beyond the scope of this rulemaking action and would necessitate additional rulemaking proposals. However, most operators presently activate flight recorders at engine start and other operators who wish to record "steady state" data are encouraged to consider the ALPA comment.

ALPA also strongly opposes the "use of CVR recordings for any purpose other than pure accident investigation activities" and the "premature release" of CVR information during accident investigations.

One commenter stated a belief that "in recent years, because of the rapid growth of the airlines industry, training and experience levels have dropped * * *." The commenter stated that the FAA should require additional training and safety measures rather than additional equipment. The FAA does not believe the situation is an either/or; FAA has taken action on training and other safety measures, for example, its windshear training proposal [52 FR 20560, June 1, 1987]. In any event, consideration of additional pilot training and safety measures outside the area of recording equipment is beyond the scope of this rulemaking action.

Summary of Rule Changes

Significant changes between the proposed rule and the final rule are summarized below. These changes were discussed in the appropriate sections of the Comment Discussion above:

(1) The compliance dates have been extended from 2 years to 3 years.

(2) Pre-wiring requirements in § 91.35 and § 135.52 have been deleted.

(3) The requirements for airplanes currently equipped with a digital data bus are clarified in §§ 121.343(e) and 125.225(c).

(4) Certain of the parameters in Appendix B of Part 121 have been made optional.

(5) Aircraft required to be upgraded under § 135.152(b) must meet the 11-parameter or 17-parameter flight recorder requirements (currently required of certain airplanes used under Part 121) except those manufactured after October 11, 1991.

(6) Requirements pertaining to the use of boom microphones have been clarified.

(7) The resolution readout column in each of the appendices has been made applicable only to aircraft manufactured after October 11, 1991.

The changes above were coordinated with the NTSB staff who have indicated agreement that this final rule meets the intent of the NTSB recommendations in its letter of June 19, 1987.

In addition to the above changes, Parts 23 and 27 have been revised to include airworthiness requirements for flight and voice recorders. In the proposal such airworthiness requirements were only in Parts 25 and 29, and all operators subject to flight and voice recorder requirements were referred to those parts. In the interest of consistency, the final rule includes airworthiness requirements for flight and voice recorders in Parts 23, 25, 27, and 29. References in the operating rule have been revised accordingly.

Request for Additional Comments on Part 91 Requirements

Notwithstanding that the Part 91 requirements have been incorporated in this final rule, the FAA is still interested in receiving comments with respect to issues raised in Notice 88–1. The FAA is particularly interested in comments regarding the questions asked on page 4315 of the **Federal Register** publication of the notice (53 FR 4315). Therefore, a comment period of 90 days is being provided to allow the public to comment accordingly. The FAA will review all additional comments submitted and, within 1 year after the publication of this amendment in the **Federal Register**, will publish a document discussing all comments, presenting FAA findings based upon the comments, and proposing any revisions to the requirements contained herein, if necessary.

Regulatory Evaluation Summary

The complete regulatory evaluation of the final rule is available in the regulatory docket. A discussion of those comments addressing the regulatory evaluation of the notice and a summary of the final regulatory evaluation are presented below.

Comments addressing the regulatory evaluation generally expressed concern about the costs of the proposed regulations, but provided very little detail in support of their conclusions. This was true with respect to both direct acquisition and installation costs, and indirect costs from factors such as reduced payload or aircraft range.

Some commenters stated that the amendments would impose a severe economic burden on small companies operating small aircraft for hire. The FAA is aware that the amendments will result in economic impacts. However, the Department of Transportation has been directed by the Congress to take these actions.

Some commenters misinterpreted the significance of the 10-year analysis period to mean that the FAA expected operators to spread their retrofit costs over 10 years. FAA's cost estimates were for total program costs over 10 years. In developing these estimates, retrofit costs were concentrated in the first two years of the analysis period. However, the FAA has extended the compliance period from the proposed 2-year period to three years in the final rule, which should provide relief to many operators.

Some commenters expressed concern about the high cost of retrofitting their aircraft. However, it appears they misunderstood that certain proposed flight recorder requirements would apply to newly manufactured aircraft only. Further, concerns were expressed that a 32 parameter retrofit requirement

for 20 to 30 passenger seat aircraft operated under Part 135 would impose requirements that are more stringent than those requirements applicable to existing Part 121 aircraft. This issue has been resolved in the final rule by adopting requirements for existing 20 to 30 passenger Part 135 aircraft that are similar to the current Part 121 requirements.

One commenter stated that the FAA did not consider initial development and certification costs in its regulatory evaluation. However, the FAA did attempt to account for this by adding 10 percent to its equipment and installation cost estimates to provide for certification, start-up, and support equipment costs for proposals affecting aircraft operated under Parts 91, 125, and 135. This was not done for Part 121 because aircraft exist that meet the proposed requirements, and support equipment already is in service because of existing recorder requirements.

The regulatory evaluation of the final rule is very similar to the regulatory evaluation of the notice. Appropriate revisions have been made to reflect the extension of the compliance period from 2 years to 3 years, the easing of the flight recorder retrofit requirements originally proposed for larger Part 135 aircraft, and other minor clarifying changes.

Briefly, the costs of these rules result from the need to acquire, install, and maintain recorder equipment, as well as the cost of additional fuel consumption attributable to the additional weight of this equipment, and miscellaneous costs related to engineering and certification requirements, support equipment, and administrative start-up costs. The FAA estimates that the cost for all categories of aircraft affected by these rules will be approximately $297 ± million (1987 dollars), or a present value of $207 ± million when discounted back to the start of the ten-year analysis period using the 10 percent discount rate prescribed by the Office of Management and Budget. Other potential costs of this rule that have not been quantified include diminished payload carrying capability and/or reduced range that may affect some smaller aircraft as a result of the weight and volume of these recorders, as well as possible safety tradeoffs with other equipment, such as traffic alert and collision avoidance systems, ground proximity warning systems, weather radar, etc. Solid state technology potentially could avoid or reduce many of these costs and tradeoffs.

Flight recorders and cockpit voice recorders provide information only, which does not directly save lives or prevent accidents. Accidents and casualties are prevented by other actions, such as improvements in aircraft design or operating procedures, which may result from information gained by recorders. Because the benefits of recorders are indirect, they have only been discussed qualitatively in this analysis.

Flight recorders have proven effective in determinations of aircraft structural, mechanical, and systems failures that have led to corrective actions such as aircraft modifications or changes in operating procedures. Flight recorders are extremely useful in identifying the responses of flight crews to hazardous situations, and they contribute substantially to human factors analysis. Flight recorders also help define more precisely those operational problems that need to be addressed through research and development programs, such as windshear encounters. Further, many lessons learned from flight recorders, especially those concerning human factors and operational problems, are not limited to the particular aircraft type involved in an accident. Rather, they provide safety insights that are beneficial to all pilots operating many different types of aircraft under various operating rules. Additionally, recorders will aid significantly in the analysis of those accidents that will inevitably be experienced by aircraft utilizing new technologies, such as fly-by-wire control systems, canards, and extensive use of composite materials in aircraft structures.

International Trade Impact Assessment

These amendments will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The amendments will affect only U.S. air carriers and operators. Foreign air carriers are prohibited from operating between points within the United States; therefore, they would not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers are not expected to realize any cost advantages over U.S. air carriers because many foreign countries have recorder requirements that are as stringent as those adopted in this final rule. Further, general aviation operations conducted in the United States are not in any direct competition with foreign enterprises. For these reasons, the FAA does not expect that these amendments will result in any trade impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Any small entity that operates any aircraft in the categories that are included in the amendments to Parts 91, 121, 125, and 135 would be affected by this rule. Some of these amendments could result in "a significant economic impact on a substantial number" of small entity operators and air carriers. Most manufacturers that certificate aircraft under Parts 25 and 29 are not small entities and therefore are not subject to the RFA.

The following analysis explains the reasons for this determination concerning operators and air carriers. In developing estimates of annualized net compliance costs, uniform annualized costs for capital investments have been determined by multiplying the amount of the investment by a capital recovery factor appropriate for the discount rate and period of the analysis. A capital recovery factor of .155, based upon a 10 percent discount rate over a 10-year period, has been used in this analysis. Threshold cost values and small entity size standards are those stated in FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance.* Values have been adjusted to 1987 dollars.

The threshold values defining a significant economic impact for scheduled carriers are $96,200 if the entire fleet has a seating capacity of over 60 seats, and $53,800 for other scheduled carriers. The threshold value for an unscheduled operator is only $3,800. Further, a small entity operator of aircraft for hire is defined as one which owns 9 or fewer aircraft.

The annualized cost for the least expensive requirement adopted in this final rule, a CVR retrofit, is approximately, $3,500 per aircraft. Therefore, an operator owning only one aircraft is very close to the $3,800 threshold for unscheduled operators, and any operator owning more than one aircraft is well over the threshold. This would apply to virtually all small Part 135 operators affected by the rule. A similar argument can be made for Part 125 operators owning only one aircraft because they would be required to retrofit the far more expensive flight recorders as well as CVR's. It is possible that a substantial number of small

entities (defined as one-third of the small entities affected by the particular proposal) could incur significant economic impacts, particularly scheduled Part 135 operators (commuters) if they obtain between 6 and 9 new aircraft with 19 or fewer seats, or retrofit between about 4 and 9 aircraft with 20 to 30 seats. Further, any small unscheduled Part 121 operator purchasing one or more new aircraft not equipped with a digital data bus and digital flight data acquisition unit (DFDAU) will exceed the threshold for nonscheduled operators.

Part 91 operators of aircraft affected by these proposals generally are not small entities, however, and therefore would not be subject to the RFA. For these reasons, the FAA has determined that these amendments may have a significant economic impact on a substantial number of those small entities operating under Parts 121, 125, and 135, and a regulatory flexibility analysis is required under the terms of the RFA. The final regulatory flexibility analysis follows below.

Final Regulatory Flexibility Analysis

As required by Section 604 of the RFA, the following analysis deals with the proposed flight recorder requirements as they relate to small operators.

A. Why Agency Action Is Taken

This rulemaking is in response to Congressional action and to several recommendations made by the NTSB. The reasons for agency action are detailed in the preamble and the regulatory evaluation.

Briefly, the advantages of additional recorded information has been demonstrated by those aircraft so equipped, and it is desirable that more specific information be obtained following an accident involving additional categories of aircraft than is possible under current regulations.

B. Summary of Issues Raised by Public Comments

Comments addressing those issues identified in the initial regulatory flexibility analysis as potentially affecting small entities primarily concerned the impact of the proposals on Part 135 operators. These commenters generally expressed concern that the proposals would impose unreasonable costs on operators in comparison to any safety benefits that might result. (Similar comments were received concerning Part 91 operations. However, those entities that conduct Part 91 operations in aircraft that will be affected by this rule generally are not small entities.)

In view of the data submitted, the final rule has been modified to extend the compliance period from 2 years to 3 years; and the flight recorder retrofit requirements for 20 to 30 passenger seat Part 135 aircraft have been reduced from the 32 parameters proposed, to only 11 or 17 parameters, depending upon the date of type certification (essentially, the same requirements as those currently in Part 121).

C. Alternatives to the Proposal

Other than those revisions discussed above, no alternatives to these proposals have been considered. The Secretary of Transportation has been directed by Congress to initiate a rulemaking that considers the recommendations of the National Transportation Safety Board to the Federal Aviation Administration concerning the use of cockpit voice recorders and flight data recorders on commuter and other aircraft. The FAA has concluded that Congress intended the NTSB to have available whatever data it needs for accident investigation purposes if acquiring that data is technologically feasible.

Federalism Implications

The regulations set forth in this notice are proposed under the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.). The FA Act has been interpreted to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this proposed regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 but that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). For the reasons discussed above, it also has been determined that the rule may have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Parts 23, 25, 27, and 29

Aircraft, Aviation safety, Safety.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Aircraft, Aircraft pilots, Airplanes, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Airworthiness

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air taxi, Aircraft, Airplanes, Rotorcraft.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 23, 25, 27, 29, 91, 121, 125, and 135 of the Federal Aviation Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for Part 23 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983).

2. By adding new § 23.1457 to read as follows:

§ 23.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the airplane by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the airplane's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section must be met by installing a cockpit-mounted area microphone, located in the best position for recording voice

communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations. The microphone must be so located and, if necessary, the preamplifiers and filters of the recorder must be so adjusted or supplemented, so that the intelligibility of the recorded communications is as high as practicable when recorded under flight cockpit noise conditions and played back. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each boom, mask, or handheld microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or handheld microphone, headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4) For the fourth channel from:

(i) Each boom, mask, or handheld microphone, headset, or speaker used at the station for the third and fourth crewmembers.

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system, if its signals are not picked up by another channel.

(5) And that as far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire. In meeting this requirement, the record container must be as far aft as practicable, but may not be where aft mounted engines may crush the container during impact. However, it need not be outside of the pressurized compartment.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such manner that they are not likely to be separated during crash impact.

3. By adding § 23.1459 to read as follows:

§ 23.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 23.1323, 23.1325, and 23.1327, as appropriate;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally either within the approved center of gravity limits of the airplane, or at a distance forward or aft of these limits that does not exceed 25 percent of the airplane's mean aerodynamic chord;

(3) It receives its electrical power power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(b) Each nonejectable record container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire. In meeting this requirement the record container must be located as far aft as practicable, but need not be aft of the pressurized compartment, and may not be where aft-mounted engines may crush the container upon impact.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. The correlation must cover the airspeed range over which the airplane is to be operated, the range of altitude to which the airplane is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By revising § 25.1457 (c) (1), (2), (3), and (4)(i) and adding a new paragraph (c)(5) to read as follows:

§ 25.1457 Cockpit voice recorders.

* * * * *

(c) * * *

(1) For the first channel, from each boom, mask, or hand-held microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or hand-held microphone,

headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4) * * *

(i) Each boom, mask, or hand-held microphone, headset, or speaker used at the station for the third and fourth crew members; or

* * * * *

(5) As far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

* * * * *

3. By revising § 25.1459 (a)(4) and adding a new paragraph (e) to read as follows:

§ 25.1459 Flight recorders.

* * * * *

(a) * * *

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

* * * * *

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for Part 27 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983).

2. By adding new § 27.1457 to read as follows:

§ 27.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved, and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the rotorcraft by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the rotorcraft's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system, and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section may be met:

(1) By installing a cockpit-mounted area microphone located in the best position for recording voice communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations; or

(2) By installing a continually energized or voice-actuated lip microphone at the first and second pilot stations.

The microphone specified in this paragraph must be so located and, if necessary, the preamplifiers and filters of the recorder must be adjusted or supplemented so that the recorded communications are intelligible when recorded under flight cockpit noise conditions and played back. The level of intelligibility must be approved by the Administrator. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each microphone, headset, or speaker used at the first pilot station.

(2) For the second channel, from each microphone, headset, or speaker used at the second pilot station.

(3) For the third channel, from the cockpit-mounted area microphone, or the continually energized or voice-actuated lip microphone at the first and second pilot stations.

(4) For the fourth channel, from:

(i) Each microphone, headset, or speaker used at the stations for the third and fourth crewmembers; or

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system if its signals are not picked up by another channel.

(iii) Each microphone on the flight deck that is used with the rotorcraft's loudspeaker system if its signals are not picked up by another channel.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads;

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must be either bright orange or bright yellow.

3. By adding new § 27.1459 to read as follows:

§ 27.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 27.1323, 27.1325, and 27.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium;

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact; and

(b) Each nonejectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash

impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for Part 29 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding new § 29.1459 to read as follows:

§ 29.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 29.1323, 29.1325, and 29.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for perflight checking of the recorder for proper recording of data in the storage medium; and

(5) Except for recorders powered solely by the engine-drive electrical generator system, there is an automatic means to simultaneously stop a recorder that has a date erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact.

(b) Each nonejectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact.

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 91.35 by redesignating paragraph (b) as (f) and adding new paragraphs (b), (c), (d), and (e), to read as follows:

§ 91.35 Flight recorders and cockpit voice recorders.

* * * * *

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats, or 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in Appendix E, for an airplane, or Appendix F, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder, required by this section, is installed, it must be operated continously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight; and

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

* * * * *

3. By adding Appendices E and F to read as follows:

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V_{so} to V_D (KIAS)	±5% or ±10 ks., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%.[3]
Altitude	−1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Altitude	100% of usable	±2°	1	0.8°.
Roll Altitude	±60° or 100% of usale range, whichever is greater.	±2°	1	0.8°
Stabilizer Trim Position, or	Full Range	±3% unless higher uniquely required	1	1%.[3]
Pitch Control Position	Full Range	±3% unless higher uniquely required	1	1%.[3]
Engine Power, Each Engine:				
Fan or N_1 Speed or EPR or Cockpit indications Used for Aircraft Certification OR.	Maximum Range	±5%	1	1%.[3]
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed)	1%.[3]
			1 (torque)	1%.[3]
Altitude Rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. below 12,000.
Angle of Attack [2] (need depends on altitude resolution).	−20° to 40° or of usuable range	±2°	1	0.8%.[3]
Radio Transmitter Keying (Discrete)	On/Off		1	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR		1	
	Analog 0–100% range	±3°	1	1%.[3]
LE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR		1	
	Analog 0–100% range	±3°	1	1%.[3]
Thrust Reverser, Each Engine (Discrete)	Stowed or full reverse		1	
Spoiler-Speedbrake (Discrete)	Stowed or out		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

[3] Per cent of full range.

[4] This column applies to aircraft manufactured after October 11, 1991

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V_m in to V_D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	350°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch Attitude	100% of usable range	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main Rotor Speed	Maximum Range	±5%	1	1% [2]
Free or Power Turbine	Maximum Range	±5%	1	1% [2]
Engine Torque	Maximum Range	±5%	1	1% [2]

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary-if applicable (Discrete)	High/Low		1	
Radio Transmitter Keying (Discrete)	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status-Engaged (Discrete)	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% [2]
Pedal Position	Full range	±3%	2	1% [2]
Lat. Cyclic	Full range	±3%	2	1% [2]
Long. Cyclic	Full range	±3%	2	1% [2]
Controllable Stabilator Position	Full range	±3%	2	1% [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Per cent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 121.343 by redesignating existing paragraphs (e), (f), (g), (h), and (i) as (g), (h), (i), (j), and (k), and by revising the introductory clause of paragraph (a) and by adding two new paragraphs, (e) and (f), to read as follows:

§ 121.343 Flight recorders.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section,

* * *

* * * * *

(e) After October 11, 1991, no person may operate a large airplane equipped with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix B of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(f) After October 11, 1991, no person may operate an airplane specified in paragraph (b) of this section that is manufactured after October 11, 1991, nor an airplane specified in paragraph (a) of this section that has been type certificated after September 30, 1969, and manufactured after October 11, 1991, unless it is equipped with one or more flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B of this part must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

3. Section 121.359 is amended by redesignating existing paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone, the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

4. By revising Appendix B of Part 121 to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] readout
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5′ to 35′ [1]
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 D	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5°
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	−75°	±2°	1	0.5°.
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full Range Forward	±2°	1 (per engine)	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position	±3° or as Pilot's Indicator	0.5	0.5% [2]

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] readout
Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position	±3° or as Pilot's Indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, In Transit, and Reverse (Discrete).		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full Range or Each Discrete Position	±2% Unless Higher Accuracy Uniquely Required.	1	0.2% [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input and/or Surface Position—Primary Controls (Pitch, Roll, Yaw) [3]	Full Range	±2° Unless Higher Accuracy Uniquely Required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full Range	±3% Unless Higher Accuracy Uniquely Required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode and Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft.	1	1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature..	−50°C to +90°C	±2°c	0.5	0.3°c
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only).	1	0.2% [2]
If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:				
Drift Angle	When available, As installed	As installed	4	
Wind Speed and Direction	When available, As installed	As installed	4	
Latitude and Longitude	When available, As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine).	
N1	As installed	As installed	1 (per engine).	
N2	As installed	As installed	1 (per engine).	
EGT	As installed	As installed	1 (per engine).	
Throttle Lever Position	As installed	As installed	1 (per engine).	
Fuel Flow	As installed	As installed	1 (per engine).	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0-200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Per cent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MINIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for Part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 125.202 [Removed]

2. By removing existing § 125.202.

3. By adding a new § 125.225, to read as follows:

§ 125.225 Flight recorders.

(a) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated before October 1, 1969, for operations above 25,000 feet altitude, nor a multiengine, turbine powered airplane type certificated before October 1, 1969, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined within the ranges, accuracies, resolution, and recording intervals specified in Appendix D of this part:

(1) Time;
(2) Altitude;
(3) Airspeed;
(4) Vertical acceleration;
(5) Heading;
(6) Time of each radio transmission to or from air traffic control;
(7) Pitch attitude;
(8) Roll attitude;
(9) Longitudinal acceleration;
(10) Control column or pitch control surface position; and
(11) Thrust of each engine.

(b) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated after September 30, 1969, for operations above 25,000 feet altitude, nor a multiengine, turbine powered airplane type certificated after September 30, 1969, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined with the ranges, accuracies, resolutions, and recording intervals specified in Appendix D of this part:

(1) Time;
(2) Altitude;
(3) Airspeed;
(4) Vertical acceleration;
(5) Heading;
(6) Time of each radio transmission either to or from air traffic control;
(7) Pitch attitude;
(8) Roll attitude;
(9) Longitudinal acceleration;
(10) Pitch trim position;
(11) Control column or pitch control surface position;
(12) Control wheel or lateral control surface position;
(13) Rudder pedal or yaw control surface position;
(14) Thrust of each engine;
(15) Position of each trust reverser;
(16) Trailing edge flap or cockpit flap control position; and
(17) Leading edge flap or cockpit flap control position.

(c) After October 11, 1991, no person may operate a large airplane equipped with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix D of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(d) No person may operate under this part an airplane that is manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix D of this part must be recorded within the ranges, accuracies, resolutions and sampling intervals specified. For the purpose of this section, "manufactured" means the point in time at which the airplane inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data.

(e) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(f) Except as provided in paragraph (g) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a), (b), (c), or (d) of this section, as applicable, until the airplane has been operated for at least 25 hours of the operating time specified in § 125.227(a) of this chapter. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (g) of this section, no record need be kept more than 60 days.

(g) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under 49 CFR Part 830 and that results in termination of the flight, the certificate holder shall remove the recording media from the airplane and keep the recorded data required by paragraph (a), (b), (c), or (d) of this section, as applicable, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(h) Each flight recorder required by this section must be installed in accordance with the requirements of § 25.1459 of this chapter in effect on August 31, 1977. The correlation required by § 25.1459(c) of this chapter need be established only on one airplane of any group of airplanes.

(1) That are of the same type;

(2) On which the flight recorder models and their installations are the same; and

(3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(i) Each flight recorder required by this section that records the data specified in paragraph (a), (b), (c), or (d) of this section must have an approved device to assist in locating that recorder under water.

4. By adding a new § 125.227, to read as follows:

§ 125.227 Cockpit voice recorders.

(a) No certificate holder may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) Each certificate holder shall establish a schedule for completion, before the prescribed dates, of the cockpit voice recorder installations required by paragraph (a) of this section. In addition, the certificate holder shall identify any airplane specified in paragraph (a) of this section he intends to discontinue using before the prescribed dates.

(c) The cockpit voice recorder required by this section must also meet the following standards:

(1) The requirements of Part 25 of this chapter in effect after October 11, 1991.

(2) After September 1, 1980, each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact, unless the cockpit voice recorder and the flight recorder, required by § 125.225 of this chapter, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used so that, at any time during the operation of the

recorder, information recorded more than 30 minutes earlier may be erased or otherwise obliterated.

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(f) In the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations, which results in the termination of the flight, the certificate holder shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with investigations under 49 CFR Part 830. The Administrator does not use the record in any civil penalty or certificate action.

5. By adding a new Appendix D, to read as follows:

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35' [1].
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 V_D	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5.
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's Indicator	0.5	0.5% [2].
Leading Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, in transit, and reverse (Discrete)		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full range or each discrete position	±2% unless higher accuracy uniquely required.	1	0.2% [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input and/or Surface Position-Primary Controls (Pitch, Roll, Yaw) [3]	Full range	±2° unless higher accuracy uniquely required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode and Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft.		1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	±2°C	0.5	0.3°C.
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As Installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only).	1	0.2% [2]
If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:				
Drift Angle	When available. As installed	As installed	4	
Wind Speed and Direction	When available. As installed	As installed	4	
Latitude and Longitude	When available. As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS:				
*A	As installed	As installed	1	

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] read out
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0–200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Percent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

PART 135—AIR TAXI OPERATIONS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 135.151 by revising paragraphs (a) and (b), and by adding new paragraphs (d) and (e) to read as follows:

§ 135.151 Cockpit voice recorders.

(a) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with § 23.1457, § 25.1457, § 27.1457 or § 29.1457 of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

* * * * *

(d) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that during the operation of the recorder, information:

(1) Recorded in accordance with paragraph (a) of this section and recorded more than 15 minutes earlier; or

(2) Recorded in accordance with paragraph (b) of this section and recorded more than 30 minutes earlier; may be erased or otherwise obliterated.

3. By adding a new § 135.152 to read as follows:

§ 135.152 Flight recorders.

(a) No person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seat, of 10 to 19 seats, that is brought onto the U.S. register after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B or C, as applicable, of this part must be recorded within the range accuracy, resolution, and recording intervals as specified. The recorder shall retain no less than 8 hours of aircraft operation.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane having a passenger seating configuration of 20 to 30 seats or a multiengine, turbine-powered rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters in Appendix D or E of this part, as applicable, that are set forth below, must be recorded within the ranges, accuracies, resolutions, and sampling intervals as specified.

(1) Except as provided in paragraph (b)(3) of this section for aircraft type certificated before October 1, 1969, the following parameters must be recorded:

(i) Time;
(ii) Altitude;
(iii) Airspeed;
(iv) Vertical acceleration;
(v) Heading;
(vi) Time of each radio transmission to or from air traffic control;
(vii) Pitch attitude;
(viii) Roll attitude;
(ix) Longitudinal acceleration;
(x) Control column or pitch control surface position; and
(xi) Thrust of each engine.

(2) Except as provided in paragraph (b)(3) of this section for aircraft type certificated after September 30, 1969, the following parameters must be recorded:

(i) Time;
(ii) Altitude;
(iii) Airspeed;
(iv) Vertical acceleration;
(v) Heading;
(vi) Time of each radio transmission either to or from air traffic control;
(vii) Pitch attitude;
(viii) Roll attitude;
(ix) Longitudinal acceleration;

(x) Pitch trim position;
(xi) Control column or pitch control surface position;
(xii) Control wheel or lateral control surface position;
(xiii) Rudder pedal or yaw control surface position;
(xiv) Thrust of each engine;
(xv) Position of each thrust reverser;
(xvi) Trailing edge flap or cockpit flap control position; and
(xvii) Leading edge flap or cockpit flap control position.

(3) For aircraft manufactured after October 11, 1991, all of the parameters listed in Appendix D or E of this part, as applicable, must be recorded.

(c) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins the lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Except as provided in paragraph (c) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a) of this section until the aircraft has been operating for at least 8 hours of the operating time specified in paragraph (c) of this section. In addition, each certificate holder shall keep the recorded data prescribed in paragraph (b) of this section for an airplane until the airplane has been operating for at least 25 hours, and for a rotorcraft until the rotorcraft has been operating for at least 10 hours, of the operating time specified in paragraph (c) of this section. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (c) of this section, no record need be kept more than 60 days.

(e) In the event of an accident or occurrence that requires the immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations and that results in termination of the flight, the certificate holder shall remove the recording media from the aircraft and keep the recorded data required by paragraphs (a) and (b) of this section for at least 60 days or for a longer period upon request of the Board or the Administrator.

(f) Each flight recorder required by this section must be installed in accordance with the requirements of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter need be established only on one aircraft of a group of aircraft:

(1) That are of the same type;

(2) On which the flight recorder models and their installations are the same; and

(3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(g) Each flight recorder required by this section that records the data specified in paragraphs (a) and (b) of this section must have an approved device to assist in locating that recorder under water.

4. By adding new Appendices B, C, D, and E, to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
Relative time (from recorded on prior to takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_{so} to V_D (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1% [3]
Altitude	−1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch attitude	100% of usable	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer trim position	Full range	±3% unless higher uniquely required	1	1% [3]
Or				
Pitch control position	Full range	±3% unless higher uniquely required	1	1% [3]
Engine Power, Each Engine				
Fan or N_1 speed or EPR or cockpit indications used for aircraft certification.	Maximum range	±5%	1	1% [3]
Or				
Prop. speed and torque (sample once/sec as close together as practicable).			1 (prop speed), 1 (torque).	
Altitude rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. Below 12,000.
Angle of attack [2] (need depends on altitude resolution).	−20° to 40° or of usable range	±2°	1	0.8% [3].
Radio transmitter keying (discrete)	On/off		1	
TE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP)		1	
	Or			
	Analog 0–100% range	±3°	1	1% [3].
LE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP)		1	

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
	Or			
	Analog 0-100% range	±3°	1	1% [3]
Thrust reverser, each engine (Discrete)	Stowed or full reverse		1	
Spoiler/speedbrake (discrete)	Stowed or out		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.
[3] Per cent of full range.
[4] This column applies to aircraft manufacturing after October 11, 1991

APPENDIX C—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Relative time (from recorded on prior to takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_{min} to V_D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch attitude	100% of usable range	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main rotor speed	Maximum range	±5%	1	1%. [2]
Free or power turbine	Maximum range	+5%	1	1%. [2]
Engine torque	Maximum range	±5%	1	1%. [2]
Flight Control—Hydraulic Pressure				
Primary (discrete)	High/low		1	
Secondary—if applicable (discrete)	High/low		1	
Radio transmitter keying (discrete)	On/off		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	
SAS status—engaged (discrete)	Engaged/disengaged		1	
SAS fault status (discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% [2]
Pedal position	Full range	±3%	2	1%. [2]
Lat. cyclic	Full range	±3%	2	1%. [2]
Long. cyclic	Full range	±3%	2	1%. [2]
Controllable stabilator position	Full range	±3%	2	1%. [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Per cent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	resolution [4] read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35' [1]
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 V_D	±5%, ±3%	1	1kt.
Heading	360°	±2°	1	0.5°

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	resolution [4] read out
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1 (per engine)	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Leading Edge Flap on or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, in transit, and reverse (discretion).		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full range or each discrete position	±2% unless higher accuracy uniquely required.	1	0.22 [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input And/or Surface Position-Primary Controls (Pitch, Roll, Yaw) [3].	Full range	±2° unless higher accuracy uniquely required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode And Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% whichever is greater below 500 ft and ±5% above 500 ft.	1	1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature.	−50°C to +90°c	±2°c	0.5	0.3°c/
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As installed	Most accurate systems installed (IMS equipped aircraft only).	1	0.2% [2]
If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:				
Drift Angle	When available. As installed	As installed	4	
Wind Speed and Direction	When available. As installed	As installed	4	
Latitude and Longitude	When available. As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0-200 HM;	As installed	0.25	1mi.
Nav 1 and 2 Frequency Selection	Full range.	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Per cent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
Time (GMT)	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 30'.
Airspeed	As the installed measuring system	±3%	1	1 kt.
Heading	360°	±2°	1	0.5°.
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	2	0.5°
Roll Attitude	±180°	±2°	2	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	0.25 sec.
Power in Each Engine: Free Power Turbine Speed *and* Engine Torque.	0–130% (power Turbine Speed) Full range (Torque).	±2%	1 speed 1 torque (per engine).	0.2% [1] to 0.4% [1].
Main Rotor Speed	0–130%	±2%	2	0.3% [1].
Altitude Rate	±6,000 ft/min	As installed	2	0.2% [1].
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal).	Full range	±3%	2	0.5% [1].
Flight Control Hydraulic Pressure Low	Discrete, each circuit		1	
Flight Control Hydraulic Pressure Selector Switch Position, 1st and 2nd stage.	Discrete		1	
AFCS Mode and Engagement Status	Discrete (5 bits necessary)		1	
Stability Augmentation System Engage	Discrete		1	
SAS Fault Status	Discrete		0.25	
Main Gearbox Temperature Low	As installed	As installed	0.25	0.5% [1].
Main Gearbox Temperature High	As installed	As installed	0.5	0.5% [1].
Controllable Stabilator Position	Full Range	±3%	2	0.4% [1].
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Lateral Acceleration	±1g	±1.5% max range excluding datum of ±5%.	4	0.01g.
Master Warning	Discrete		1	
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	
Outside Air Temperature	−50°C to +90°C	±2°c	0.5	0.3°c.

[1] Per cent of full range.
[2] This column applies to aircraft manufactured after October 11, 1991

Issued in Washington, DC, on June 30, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–15179 Filed 7–1–88; 4:07 pm]

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Monday
July 11, 1988

Part III

Department of State

48 CFR Ch. 6

Acquisition Regulation; Establishment; Final Rule and Interim Rule With Request For Comments

DEPARTMENT OF STATE

48 CFR Ch. 6

[108.868]

Acquisition Regulation; Establishment

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule and interim final rule with request for comment.

SUMMARY: The Department of State Acquisition Regulation (DOSAR) is established as part of the Federal Acquisition Regulations System, which consists of the Federal Acquisition Regulation (FAR) and agency acquisition regulations that implement or supplement the FAR. This rule is necessary to provide regulatory coverage not otherwise found in the FAR for Department of State acquisitions.

DATES: This final rule and interim final rule are effective on July 11, 1988. Comments on the interim rule should be submitted on or before August 10, 1988. The interim final rule portions of the regulation are discussed in **SUPPLEMENTARY INFORMATION,** section I.C. below.

ADDRESS: Interested parties should submit written comments to the Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, telephone (703) 875–7044.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Comments on Proposed Rule
- B. Final Rule
- C. Interim Final Rule
- D. Standardization

II. Procedural Requirements
- A. Executive Order 12291
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Comments on Proposed Rule

On May 28, 1987, the Department published in the **Federal Register** (52 FR 19990) the DOSAR, a proposed rule that would implement and supplement the FAR. One public entity commented on the DOSAR; the Department responded directly to that entity.

The DOSAR was rewritten in consideration of comments received from the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget, comments received from Department of State offices, or to provide a more accurate and readable document. Except as provided in Supplementary Information sections C and D below, those changes have been incorporated into the final rule.

B. Final Rule

This final rule includes updates to the DOSAR resulting from changes made to the FAR since the DOSAR was published as a proposed rule; therefore, the original DOSAR coverage could not be published as written in the proposed rule. The changes are as follows.

1. DOSAR 601.602–3, Ratification of Unauthorized Contractual Commitments, rewritten pursuant to Federal Acquisition Circular (FAC) 84–33.

2. DOSAR 630.201–5, Waiver, added pursuant to FAC 84–30.

3. DOSAR 630.303, CAS Program Requirements, retitled to conform with FAC 84–30.

4. DOSAR 630.304, Waiver, deleted pursuant to FAC 84–30.

5. DOSAR 632.111–70(a), prescription for prompt payment, rewritten as part of DOSAR 632.111–70, and the clause at DOSAR 652.232–70, Prompt Payment, deleted pursuant to FAC 84–33.

C. Interim Final Rule

As a result of OFPP's review, the Department has agreed to issue the following DOSAR coverage as an interim final rule. The Department has determined that compelling reasons exist to promulgate an interim final rule because the coverage is required and it was previously published in the DOSAR proposed rule.

1. OFPP recommended that the Department submit for inclusion in the FAR several items covered in the proposed rule that may not be unique to the Department of State. Those items were identified in the preamble to the proposed rule and included:

(a) DOSAR 604.404–70, prescription for contracts involving classified information and security clearances for contractor personnel, and the clauses at DOSAR 652.204–70, Security Requirements, and DOSAR 652.204–71, Security Requirements—Personnel;

(b) DOSAR 614.201–7–70(a), prescription for use of English language solicitations and contracts awarded or performed overseas, and the clause at DOSAR 652.214–70, Language Version; and

(c) DOSAR 619.201(d), responsibilities of the Small and Disadvantaged Business Utilization Specialist.

The Department received no public comments or comments from other Federal agencies on these items. Nevertheless, the Department has submitted these items to the FAR Council for consideration of FAR coverage.

2. In reviewing the DOSAR for publication as a final rule, OFPP recommended the following additional items as appropriate for coverage in the FAR:

(a) DOSAR 614.201–7–70(c), prescription for contractor's authorization to perform, and the clause at DOSAR 652.214–72, Authorization to Perform;

(b) DOSAR 628.7001, prescription for the Government's indemnity by the contractor, and the clause at DOSAR 652.228–70, Indemnification; and

(c) DOSAR 633.104 and 633.105, which implement FAR 33.104 and 33.105 concerning protests to the General Accounting Office and the General Services Administration Board of Contract Appeals;

(d) DOSAR 642.270 and 642.271, prescription for the contracting officer's representative, and the clause at DOSAR 652.242–70, Contracting Officer's Representative (COR).

The Department has submitted the above items to the FAR Council for consideration of FAR coverage.

As the material identified in paragraphs 1 and 2 above is added to the FAR, the DOSAR will be amended accordingly. Public comments received in response to this interim rule shall be considered in formulating a final rule.

D. Standardization

In consideration of OFPP's substantive problems with the coverage at DOSAR Subpart 617.70, Standardization, the Department agreed not to issue that coverage as either a final rule or an interim final rule. Therefore, DOSAR Subpart 617.70 has been removed from this rule.

II. Procedural Requirements

A. Review Under Executive Order 12291

This rule was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

Consistent with the provisions of the Regulatory Flexibility Act, Pub. L. 96–354, and as required under 5 U.S.C. 605(b), the undersigned hereby certifies that these interim and final rules will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

C. Review Under the Paperwork Reduction Act

These interim and final rules do not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.). The rules do not impose additional recordkeeping or reporting requirements beyond those contained in the FAR, for which OMB control numbers have already been assigned.

List of Subjects in 48 CFR Ch. 6

Government procurement.

For the reasons set out in the preamble, Chapter 6 of Title 48 of the Code of Federal Regulations is established as follows.

John J. Conway,

Procurement Executive.

June 24, 1988.

CHAPTER 6—DEPARTMENT OF STATE

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

PART 602—DEFINITIONS OF WORDS AND TERMS

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 604—ADMINISTRATIVE MATTERS

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

PART 606—COMPETITION REQUIREMENTS

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 609—CONTRACTOR QUALIFICATIONS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

PART 614—SEALED BIDDING

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PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

PART 629—TAXES

PART 630—COST ACCOUNTING STANDARDS

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SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

PART 643—CONTRACT MODIFICATIONS

PART 645—GOVERNMENT PROPERTY

PART 646—QUALITY ASSURANCE

PART 648—VALUE ENGINEERING

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 653—FORMS

SUBCHAPTER I—DOS SUPPLEMENTATIONS

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SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

Sec.

601.000 Scope of part.

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601.603-3 Appointment.
601.603-70 Delegations of authority.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and

deviation procedures. Acquisition procedures are integrated so as to provide a complete, logical, and comprehensive publication.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint said representative for this purpose. The Office of the Procurement Executive is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary for Administration is the agency head for the purposes of FAR 1.301. Under Delegation of Authority No. 120–3 (51 FR 16768, May 6, 1986), the Assistant Secretary for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c) (Title II, Chapter 288, section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended).

(c) The DOSAR implements and supplements the FAR. Deviations, as defined in FAR 1.401, are processed in accordance with FAR Subpart 1.4 and Subpart 601.4.

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to Section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, section, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101–70.

(b) The DOSAR and its revisions are published in the **Federal Register** and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c)(1) The DOSAR shall be referenced in the same manner as described at FAR 1.104–2(c). Using the DOSAR coverage at 609.407–3(a) as a typical illustration, reference to the—

(i) Part would be "DOSAR Part 609" outside the DOSAR and "Part 609" within the DOSAR.

(ii) Subpart would be "DOSAR Subpart 609.4" outside the DOSAR and "Subpart 609.4" within the DOSAR.

(iii) Section would be "DOSAR 609.407" outside the DOSAR and "609.407" within the DOSAR.

(iv) Subsection would be "DOSAR 609.407–3" outside the DOSAR and "609.407–3" within the DOSAR.

(v) Paragraph would be "DOSAR 609.407–3(a)" outside the DOSAR and "609.407–3(a)" within the DOSAR.

(2) When any part, subpart, section, subsection, or paragraph of the DOSAR is referenced formally in official documents such as legal briefs, it shall be prefaced by "48 CFR."

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403. The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved deviation.

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a). The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved class deviation.

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e). The Office of the Procurement Executive is the DOS central agency control point for deviations pertaining to treaties and executive agreements; that office shall provide to the FAR Secretariat a copy of each approved deviation.

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive. The Office of the Procurement Executive is the DOS central agency control point for all DOSAR deviations.

601.471 Procedures.

(a) The head of the contracting activity (see 601.603–70) shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request for a deviation shall state—

(1) The nature of the deviation requested, including whether an individual or class deviation is requested;

(2) The FAR or DOSAR regulation from which the deviation is requested;

(3) The circumstances under which the deviation would be used;

(4) The effect intended by the deviation; and

(5) The expiration date recommended for the deviation.

(b) With the request for a deviation, the head of the contracting activity shall

submit all pertinent documentation supporting the request.

(c) The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

Subpart 601.5—Agency and Public Participation

601.570 Rule making.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with section 22 of the Office of Federal Procurement Policy Act, Pub. L. 93–400, as amended (41 U.S.C. 418b).

(b) The Procurement Executive shall either accomplish or concur in all DOS acquisition rule making.

Subpart 601.6—Contracting Authority and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602–1 Authority.

(a) DOS contracts are let pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS reuglations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including interagency agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603–70.

(c) The contracting officer shall not award, modify, or terminate unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have ben obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

601.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that usually necessitate disciplinary action agaisnt the transgressor.

(2) The authority to ratify an unauthorized contractual commitment is reserved to the Procurement Executive.

(3) Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2 and Subpart 633.2.

(c) *Limitations.* The contracting officer is not required to obtain concurrence of legal counsel when recommending payment of an unauthorized commitment.

601.602–3–70 Procedures.

(a) The person who made the unauthorized commitment shall submit to the contracting officer assigned the ratification action all records and documents concerning the unauthorized commitment. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, and certified funding citations. When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized contractual commitment.

(b) The contracting officer assigned the ratification action, after determining that the requirements of paragraph (a) above have been met, shall prepare and execute a recommendation to ratify an unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official that the unauthorized commitment be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the Procurement Executive could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the Procurement Executive hereby ratifies the unauthorized commitment in the amount specified; and a date and signature block for the Procurement Executive.

(c) The information required in paragraph (b)(1) above shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit, through the head of the contracting activity (see 601.603–70), to the Procurement Executive the complete file for ratification of the unauthorized commitment.

(e) Upon receipt and review of the complete file, if the Procurement Executive ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the Procurement Executive shall return the request to the head of the contracting activity with a written explanation for the decision and a recommendation for disposition of the action.

601.603 Selection, appointment, and termination of appointment.

601.603–3 Appointment.

(a) The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive.

(b) The Procurement Executive appoints DOS contracting officers for overseas posts by specific positions, not by individual, because Foreign Service personnel assignments are rotational.

601.603–70 Delegations of authority.

(a) *Policy.* Pursuant to 601.602–1(b), the Procurement Executive has delegated procurement authority to the following contracting activities. These authorities are not redelegable. Where more than one official is listed, the abbreviation "HCA" is used to designate each head of the contracting activity, as defined in FAR 2.101.

(b) *Delegations*—(1) *Overseas posts.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services and to sell personal property is delegated to the Principal Officer, the Administrative Officer, and the Principal General Services Officer (HCA).

(i) Direct transactions with vendors within the United States shall be $25,000 or less per transaction unless such transaction is under a contract executed

by the Department of State, the General Services Administration, or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in FAR Part 13 and Part 613.

(ii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named above in this subparagraph may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292 et seq.), including the authority to make all determinations required or permitted by Section 11 of said Act but not otherwise restricted therein, is delegated to the Deputy Assistant Secretary for Foreign Buildings and to the Assistant Director for Acquisitions (HCA).

(3) *Office of Supply, Transportation and Procurement.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of services and personal property, and for the sale of personal property, is delegated to the Chief of the Procurement Division.

(4) *Office of Language Services.* The authority to enter into and administer contracts for interpreting, translating, conference reporting, and related language support and escort services is delegated to the Director.

(5) *Office of Overseas Schools.* The authority to enter into and administer contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2701), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(6) *Library.* The authority to enter into and administer contracts for the direct purchase of printing, binding, and blank-book work, when authorized by the Public Printer pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended (44 U.S.C. 504), and for the acquisition of newspapers, books, maps, and periodicals is delegated to the Chief Librarian.

(7) *Office of Communications.* The authority to enter and administer contracts for leasing communications circuits is delegated to the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 et seq.), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director of the Foreign Service Institute, the Executive Director, and the Supervisory General Services Officer (HCA).

(9) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 et seq.), including all determinations required or permitted by section 208 of said Act but not otherwise restricted therein, is delegated to the Director, Office of Foreign Missions, and the Administrative Officer (HCA).

(10) *Office of International Conferences.* The authority to enter into and administer contracts pursuant to Section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2672), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(11) *Bureau for Refugee Programs.* The authority to enter into and administer contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.), and Executive Order 11077, dated January 22, 1963, including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director, Bureau for Refugee Programs, and the Comptroller (HCA).

(12) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Counselor for Administration.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.
602.101 Definitions.
602.101-70 DOSAR definitions.

Subpart 602.2—Definitions Clause

602.201 Contract clause.
602.201-70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

"Consolidated Receiving Point" or "CRP"; means the packing firm employed by a Despatch Agency to receive and prepare items for shipment to a post. The CRP acts as agent for the government, and goods that are delivered to the CRP are constructively received by the government. The CRP receives, records, consolidates and packs items for shipment overseas under the direction of the Despatch Agency.

"Department" or "DOS" means the Department of State, including all of its activities wherever located.

"Despatch Agency" means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply, Transportation and Procurement. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and San Francisco, California.

"Government" means the Government of the United States of America unless specifically stated otherwise.

"Local procurement" means acquisition by a post in the country in which the post is located.

"Overseas post" means a "post" located outside the United States of America.

"Post" means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

"Third country procurement" means acquisition by a post in a country other than the country in which the post is located and other than the United States.

Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.202-70, Definitions, in solicitations and contracts when the acquisition may be made from a source outside the United States or when the work may be performed outside the United States.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.2—Contractor Gratuities to Government Personnel

Sec.
603.203 Reporting suspected violations of the Gratuities clause.
603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.
603.408-1 Responsibilities.

Subpart 603.6—Contracts with Government Employees or organizations owned or Controlled by Them

603.602 Exceptions.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

DOS personnel shall report immediately and in writing any apparent or suspected violation of the clause at FAR 52.203-3, Gratuities, in connection with any DOS operation. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall identify the individuals involved, outline the events, acts, or conditions which indicate the apparent violation occurred, and include all pertinent documents. The Assistant Inspector General for Investigations shall review the report for completeness and accuracy and shall make a preliminary decision whether to proceed with a full investigation. The Assistant Inspector General for Investigations shall provide the written decision to the individual who made the report and the contracting officer. If the decision is to proceed with an investigation, copies of the decision shall also be provided to the head of the contracting activity (see 601.603-70), the Procurement Executive, and the Office of the Legal Adviser.

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Preocurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603-70), to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with singles copies to the head of the contracting activity and the Procurement Executive.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.

603.408-1 Responsibilities.

In carrying out responsibilities prescribed in FAR 3.408-1, the contracting officer shall obtain advice from the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—Contract Distribution

Sec.
604.202 Agency distribution requirements.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.
604.404-70 DOSAR contract clauses.

Subpart 604.70—Contract Review

604.7001 Policy.
604.7002 Procedures.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Office or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at the overseas post.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.204-70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204-71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

Subpart 604.70—Contract Review

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract fill shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment, award of a contract, or execution of a contract modification, any of which is estimated to exceed $100,000, the contracting officer shall forward the proposed contractual action to Office of the Procurement Executive for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102-70(b).

(b) The Office of the Procurement Executive shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall document the contract file to show the rationale for not adopting any recommendations, and shall forward the file to the officer one level above the contracting officer for resolution or approval, as appropriate. For purposes of this section, the officer who has resolution/approval authority shall not be the same individual who will sign the contractual document. In instances where the contracting officer is the head of the contracting activity, as identified at 601.603-70(b), that officer shall be the Procurement Executive for domestic acquisitions and the Principal Officer at post for overseas acquisitions.

(c) For postaward reviews, the Office of the Procurement Executive shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

Sec.

605.202 Exceptions.
605.202-70 Foreign acquisitions.
605.207 Preparation and transmittal of synopses.
605.207-70 Acquisitions available from only one responsible source.

Subpart 605.5—Paid Advertisements

605.502 Authority.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202-70 Foreign acquisitions.

(a) *Purpose.* This subsection provides policy and procedures necessary to waive the requirement to synopsize proposed contracts in the *Commerce Business Daily* (CBD). The policy and procedures apply only to acquisitions by overseas posts when the acquisitions are made from sources outside the United States, its possessions, and Puerto Rico.

(b) *Policy.* Under certain conditions, waiver of the requirement to publish in the CBD notices of proposed contract actions is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside the United States, its possessions, and Puerto Rico. This policy was processed in compliance with and as authorized by Section 18(c)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and Section 8(g)(3) of the Small Business Act (15 U.S.C. 637 et seq.). This policy applies only to acquisitions funded under DOS appropriations.

(c) *Procedures.* (1) When a DOS contracting activity at post receives a request for supplies or services, the requirements office shall provide with the request a memorandum identifying all established sources of supply known to the requirements office, critical dates for delivery, installation and operational dates, an estimate of the total time lapse between the date of order and final contractor performance, the urgency of the requirement, and any other factors that may be unique or mandatory to the acquisition.

(2) The head of the contracting activity (see 601.603-70) shall review the information provided by the requirements office to determine whether publication of a CBD notice is required.

(i) If the head of the contracting activity determines that publication of CBD notice will not delay or otherwise adversely impact the post's ability to satisfy the acquisition, the notice shall be published in accordance with FAR Subpart 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice will delay or otherwise adversely impact the post's ability to satify the acquisition, that official may waive the CBD notice requirements of FAR Subpart 5.1. This determination must be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product or performance specifications, and security clearance requirements. The contracting activity shall conduct a negotiated acquisition with qualified local sources. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition. Competition in such acquisitions, including the use of written solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and Part 606.

(iii) The authority to make the determinations prescribed in this paragraph is not redelegable.

(d) *Documentation.* (1) Whenever the head of the contracting activity determines that use of this waiver authority is required, the following documentation shall be prepared and placed in the contract file:

(i) A determination and findings as to the existence of an overseas acquisition

where it is unreasonable or inappropriate to publish in the CBD a notice for the proposed contract action; and

(ii) A memorandum stating what efforts have been made to identify known and qualified sources and to obtain competition, detailing what negotiation procedures were followed, and justifying the selection and award.

(2) The head of the contracting activity shall sign all documents prescribed in this section. That official's signature on the documents constitutes approval of the determination to apply the waiver policy and certification of the completeness and accuracy of the information upon which the waiver is based.

605.207 Preparation and transmittal of synopses.

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the Procurement Executive is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in the newspapers outside the United States, the Principal General Services Officer is the agency head's designee for the purposes of FAR 5.502(a). When the Principal General Services Officer is the contracting officer for the acquisition, the officer approving the paid advertisement shall be either the Administrative Officer or the Principal Officer, as appropriate.

(b) The Procurement Executive is the agency head for the purposes of FAR 5.502(b). Advance written authorization, in accordance with and from the official designated in paragraph (a) above, is required to place paid advertisements in media other than newspapers.

PART 606—COMPETITION REQUIREMENTS

Subpart 606.1—Full and Open Competition

Sec.
606.101 Policy.
606.101-70 Foreign acquisitions not synopsized.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.
606.302-7 Public interest.
606.303-1 Requirements.
606.304 Approval of the Justification.
606.304-70 Acquisitions by overseas posts.

Subpart 606.5—Competition Advocates

606.501 Requirement.
606.501-70 Overseas posts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 606.1—Full and Open Competition

606.101 Policy.

606.101-70 Foreign acquisitions not synopsized.

As provided in 605.202-70, overseas posts exempt certain acquisitions from the requirement to synopsize in the *Commerce Business Daily*. Full and open competition for such acquisitions is met when the competitive procedures prescribed in FAR 6.102 are used.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to the Office of the Procurement Executive for transmittal to the Office of the United States Trade Representative.

606.304 Approval of the Justification.

606.304-70. Acquisitions by overseas posts.

The Principal Officer at each overseas post is the approval authority for the purposes of FAR 6.304(a)(3).

This authority is not redelegable.

Subpart 606.5—Competition Advocates

606.501 Requirement.

The Procurement Executive is the head of the agency for the purposes of FAR 6.501.

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.4—Ordering from Federal Supply Schedules

608.402 Applicability.
608.402-70 Overseas posts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 608.4—Ordering from Federal Supply Schedules

608.402 Applicability.

608.402-70 Overseas posts.

Use of the Federal Supply Schedules is not mandatory for overseas posts nor is it required for any acquisitions inside the United States for use outside the United States.

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.2—Qualifications Requirements

Sec.
609.202 Policy.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.
609.403-70 DOSAR definitions.
609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
609.405 Effect of listing.
609.405-1 Continuation of current contracts.
609.405-2 Restrictions on subcontracting.
609.405-70 Termination action decision.
609.406 Debarment.
609.406-1 General.
609.406-3 Procedures.
609.407 Suspension.
609.407-1 General.
609.407-3 Procedures.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 609.2—Qualifications Requirements

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power

of redelegation, to the head of the contracting activity (see 601.603–70).

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspending official" means the Procurement Executive.

609.403–70 DOSAR definitions.

"Fact-finding official" means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

"Notice" means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406–3 and FAR 9.407–3.

609.40 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

The Office of the Procurement Executive shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

609.405 Effect of listing.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

609.405–1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405–70.

609.405–2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–2.

609.405–70 Termination action decision.

Prior to making a decision to terminate, based on the considerations listed below, the contracting officer shall have the proposed action reviewed by agency contracting and technical personnel and by the Office of the Legal Adviser.

(a) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(b) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

(c) *Concurrence and approval.* The contracting officer's decision to terminate an existing contract with a debarred or suspended contractor must have—

(1) Written concurrence from the Office of the Legal Advisor, and

(2) Approval one level above the contracting officer.

609.406 Debarment.

609.406–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406–1(c).

609.406–3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list if all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact

based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b) The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and FAR 9.406–3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

609.407 Suspension.

609.407–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407–1(d).

609.407–3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 613.1—General

Sec.
613.103 Policy.
613.103–70 Acquisition by overseas posts.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

Subpart 613.5—Purchase Orders

613.501 General.
613.505 Purchase order and related forms.
613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
613.507 Clauses.
613.507–70 DOSAR clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 613.1—General

613.103 Policy.

613.103–70 Acquisition by overseas posts.

(a) Overseas posts are authorized to use small purchase and other simplified purchase procedures to make purchases directly from sources within or outside the United States, in accordance with FAR Part 13, this Part 613, and 601.603–70(b)(1).

(b) Overseas posts shall ensure that the terms and conditions prescribed in FAR Part 13 are added or incorporated by reference on the documents used for small purchases from U.S. vendors.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.404(a).

Subpart 613.5—Purchase Orders

613.501 General.

The contracting officer shall distribute copies of each purchase order in conformance with Subpart 604.2.

613.505 Purchase order and related forms.

613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) In lieu of Optional Forms 347 and 348, DOS contracting activities may use either—

(1) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.302–206 and 653.302–206A, respectively); or

(2) Department of State Form (DST) 1089, Order—Supplies or Services (illustrated in 653.303–DST–1089).

(b) Both OF 206 and form DST 1089 provide the requisite space for purchase data and budgetary, accounting and voucher payment data. Either form may be used as—

(1) A purchase order for small purchases;

(2) A delivery order under an established contract;

(3) Documentation in connection with a blanket purchase agreement; and/or

(4) A voucher.

(c) (1) When using OF 206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated in 653.302–127), for that purpose.

(2) When using form DST 1089 as a purchase order and until such time as the form is revised, contracting activities shall replace the "Terms and Conditions Applicable to Purchase Orders" (located on the reverse of the original copy) with the appropriate FAR and DOSAR clauses, in accordance with 613.507–70.

613.507 Clauses.

613.507-70 DOSAR clauses.

In addition to the clauses listed on OF 347 or as otherwise prescribed in FAR 13.507, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses may be listed on a separate document and attached to each copy of the purchase order, in which case the document shall be identified by the purchase order number and the name and address of the contracting activity.

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.
614.201 Preparation of Invitation for Bids (IFB).
614.201-7 Contract clauses.
614.201-7-20 DOSAR contract clauses.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of Bids.
614.402-1 Unclassified bids.
614.402-70 Waiver of public opening of bids.
614.404 Rejection of bids.
614.404-1 Cancellation of invitations after opening.
614.406 Mistakes of bids.
614.406-3 Other mistakes disclosed before award.
614.406-4 Mistakes after award.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-70 DOSAR contract clauses.

((a) (1) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-70, Language Version, in all solicitations and contracts awarded or performed overseas.

(2) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-71, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-72, Authorization to Perform, in all solicitations and contracts awarded or performed overseas.

(d) See 615.106-70 regarding use of the clauses prescribed in this subsection when contracting by negotiation.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.406 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

614.406-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.406-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.1—General Requirements for Negotiations

Sec.
615.106 Contract clauses.
615.106-1 Examination of Records clause.
615.106-70 DOSAR contract clauses.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.
615.608 Proposal evaluation.
615.612 Formal source selection.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.
615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 615.1—General Requirements for Negotiation

615.106 Contract clauses.
615.106-1 Examination of Records clause.

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

615.106-70 DOSAR contract clauses.

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214-70, Language Version, 652.214-71, Notices, and 652.214-72, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201-7-70.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.

The authority to make the determination prescribed in FAR 15.607(c)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). In conformance with FAR 15.607(c)(3)(ii), the head of the contracting activity shall obtain a legal review from the Office of the Legal Adviser before making a determination pursuant to this subsection.

615.608 Proposal evaluation.

The authority to make the determination prescribed in FAR 15.608(b) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of

the Legal Adviser before making a determination pursuant to this section.

615.612 Formal source selection.

The authority prescribed in FAR 15.612(b), including the authority to designate a source selection authority, is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The waiver authority prescribed in FAR 15.804-3(i) is delegated, without power of redelegation, to the head of the contracting activity.

PART 616—TYPES OF CONTRACTS

Subpart 616.1—Selecting Contract Types

Sec.
616.102 Policies.
616.102-70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.
616.203-4 Contract clauses.
616.207 Firm-fixed-price, level-of-effort term contracts.
616.207-3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.
616.306 Cost-plus-fixed-fee contracts.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.
616.505-70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.
616.603-2 Application.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Pursuant to 601.603-70(b)(12)(ii), no authority is delegated to overseas posts to enter into cost-reimbursement or fixed-price incentive contracts. When the head of the contracting activity (see 601.603-70) at post determines that no other type contract will suffice to obtain needed supplies or services, that officer shall request the Procurement Executive to delegate authority to enter into a cost-reimbursement or fixed-price incentive contract, as appropriate. Such requests shall be submitted on a case-by-case basis.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

The contracting officer may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

The determination and findings prescribed in FAR 16.301-3(c) shall be executed by the contracting officer and approved at a level above the contracting officer.

616.306 Cost-plus-fixed-fee contracts.

The authority to make the determination prescribed in FAR 16.306(c)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period for definitization of a letter contract in accordance with FAR 16.603-2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval.

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.
617.102 Policy.
617.102-2 General.

Subpart 617.2—Options.

617.201 Definitions.
617.201-70 DOSAR Definitions.
617.207 Exercise of options.
617.207-70 Synopsis and competition requirements.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486 (c); 48 CFR Subpart 1.3.

Subpart 617.1—Multiyear Contracting

617.102 Policy.

617.102-2 General.

(a) Pursuant to Section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by paragraph (a)(2) above. The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally

available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(d) Any multiyear contract awarded pursuant to this subsection shall not exceed 5 years, including options, in accordance with FAR Subpart 17.2

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

"Evaluated option" means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

"Priced option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless an economic price adjustment clause is included in the contract.

"Unevaluated option" means an option that is not included in the evaluation for award purposes.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

617.207 Exercise of options.

617.207-70 Synopsis and competition requirements.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. An evaluated and priced option that was properly synopsized as provided at FAR 5.207 meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

(b) If the synopsis for the original contract action did not describe the option provisions, or the original contract action was synopsized on a sole source basis, or in those instances where an unevaluated option was included in the contract, the option must be synopsized in accordance with FAR 5.207 before the option can be exercised. Any such unpriced option, option included in a contract awarded on a sole source basis, or unevaluated option is considered a new acquisition and the justification requirements of FAR Subpart 6.3 must be met before the option is exercised.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

The authority to make the determination prescribed in FAR 17.502 is delegated to the head of the contracting activity (see 601.603-70).

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.2—Policies

Sec.
619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.
619.402-70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.
619.602-1 Referral.

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.
619.705-3 Preparing the solicitation.
619.705-4 Reviewing the subcontracting plan.
619.705-6 Postaward responsibilities of the contracting officer.
619.705-6-70 Reporting responsibilities.

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 General.
619.803 Selecting acquisitions for the 8(a) program.
619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).
619.870 Acquisition of technical requirements.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 619.2—Policies

619.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the OSDBU director annual goals for the DOS small and disadvantaged business program.

(c) The Under Secretary for Management is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of $25,000 to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making

determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business, small disadvantaged business, and labor surplus area matters as authorized by the OSDBU director.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the OSDBU director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

619.705-4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705-6 Postaward responsibilities of contracting officer.

619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected quarterly and semiannually, using Standard Form 295, Summary Subcontracting Report, for the quarterly submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the OSDBU director, not later than the 30th day of the month following the close of the reporting period.

Subpart 619.8—Contracting With the Small Business Administration (the 8(a) Program)

619.801 General.

The Procurement Executive is the agency head for the purpose of FAR 19.801(b)(2).

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).

OSDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, OSDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.870 Acquisition of technical requirements.

(a) *Offering Letter.* When a decision has been made by the OSDBU and contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications

and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition than under a non-8(a) program acquisition. The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.6—Walsh-Healey Public Contracts Act

Sec.
622.604 Exemptions.
622.604–2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604–2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604–2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.
623.104 Exemptions.
623.107 Compliance responsibilities.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.
625.102 Policy.
625.105 Evaluating offers.
625.108 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.
625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300–70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omissions.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The authority to make the determination prescribed in FAR 25.102(b) is reserved to the Procurement Executive.

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

The Office of the Procurement Executive is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination prescribed in FAR 25.202(b) is reserved to the Procurement Executive.

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300–70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority

prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts, as prescribed in FAR 25.703(b), is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228–70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.
629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202–70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401–70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

PART 630—COST ACCOUNTING STANDARDS

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 630.3—CAS Program Requirements

630.201-5 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 30.201–5(c).

PART 632—CONTRACT FINANCING

Subpart 632.1—General

Sec.
632.111 Contract clauses.
632.111–70 DOSAR contract clauses

Subpart 632.4—Advance Payments

632.402 General.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 632.1—General

632.111 Contract clauses.

632.111-70 DOSAR contract clauses.

As prescribed in FAR 32.901, the policies, procedures, and contract clause implementing Office of Management and Budget Circular A–125, Prompt Payment, do not apply to purchases made outside the United States from foreign vendors. In those instances, the contracting officer at the overseas post shall insert the clauses at 652.232–70, Invoice Requirements, in solicitations and contracts. If payments are to be made by electronic funds transfer, the contracting officer also shall insert the clause at 652.232–71, Method of Payment (Electronic Funds Transfer).

Subpart 632.4—Advance Payments

632.402 General.

The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.
633.102 General.
633.103 Protests to the agency.

Subpart 633.1—Protests

Sec.
633.104 Protests to GAO.
633.105 Protests to GSBCA.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.
633.211 Contracting officer's decision.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270–1 Scope of section.
633.270–2 Designation.
633.270–3 DOS support.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

The following procedures implement the corresponding paragraphs of FAR 33.104.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity (see 601.603–70), who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Systems. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser. For reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104–(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

633.105 Protests to GSBCA.

The following procedures implement FAR 33.105.

(a) Upon receipt of a copy of a protest to GSBCA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Systems. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBCA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBCA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR Part 61). The Office of the Legal Adviser shall then submit the file to the GSBCA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement

authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Systems of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105–(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contact Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270–1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

633.270–2 Designation.

The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

633.270–3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.
634.001 Definitions.
634.001–70 Supplemental definitions.
634.002 Policy.
634.003 Responsibilities.

Authority: 22 U.S.C. 2658, 40 U.S.C. 486(c), 48 CFR Subpart 1.3.

634.001 Definitions.

"Major system":

(a) The definition of "major system" in OMB Circular No. A–109, Major System Acquisitions (A–109), provides no exclusions; however, FAR 34.001 excludes from the definition of "major system" construction or other improvements to real property. Acquisition of capital project systems by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A–109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A–109 and paragraph (b) of the definition of "major system" prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed $10,000,000.

(c) The acquisition executive is the agency head for the purposes of paragraph (c) of the definition of "major system" prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the $10,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A–109, FAR Part 34, and this Part 634.

(d) Classification as a major system acquisition is independent of the number of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

634.001–70 Supplemental definitions.

Section five of A–109 defines several terms in addition to those defined in FAR 34.002.

634.002 Policy.

The objective of A–109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A–109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 34.003(a).

(b) The Deputy Assistant Secretary for Operations is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A–109.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.
636.101 Applicability.
636.101–70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 636.1—General

636.101 Applicability.

636.101–70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, are excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 et seq., as further codified at Section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

The Procurement Executive is the head of the agency for the purposes of FAR 36.602.

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.
637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104–70 DOS personal services contracts.

Subpart 637.2—Consulting Services

637.204 Policy.
637.204–70 Supplemental policy.
637.270 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104–70 DOS personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau for Refugee Programs, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics Matters, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e); and

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

Subpart 637.2—Consulting Services

637.204 Policy.

637.204–70 Supplemental policy.

In addition to the policy prescribed in FAR 37.204(c), consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended contracts are not to be effected except under extraordinary circumstances and with the prior approval of the head of the contracting activity (see 601.603–70). Also, grants and cooperative agreements may not be used as legal instruments for consulting services arrangements.

637.270 DOSAR contract clause.

The contracting officer shall include the clause at 652.237–70, Reports (Consulting Services), in solicitations and contracts for consulting services that require submission of written reports.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

Subpart 642.2—Assignment of Contract Administration

Sec.
642.270 Contracting Officer's Representative (COR)
642.271 DOSAR contract clause.

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.
642.1406–2–70 DOSAR contract clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 642.2—Assignment of Contract Administration

642.270 Contracting Officer's Representative (COR)

(a) Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. The COR must be a U.S. Government employee. The contracting officer shall designate the COR in writing; the designation shall define the scope and limitations of the COR's authority. The contracting officer shall provide a copy of the COR's designation to the contractor and, as necessary, copies to the requirements and payments offices. The COR does not have the authority to make any commitments or changes that will affect the price, quality, quantity, or delivery terms of a contract; in order to do so, or to otherwise commit or bind the Government, a valid contracting officer warrant is required.

(b) Contracting officers also may designate technically qualified personnel as their authorized representatives to assist in the administration of small purchases and other simplified purchase procedures. The authorities delegated under such designations shall not exceed those provided in paragraph (a) above.

642.271 DOSAR contract clause.

The contracting officer shall insert the clause at 652.242–70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.

642.1406–2–70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242–71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242–72, Shipping Instructions, in solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS

Subpart 643.1—General

Sec.
643.102 Policy.
643.102–70 Contract compliance and review.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to the Office of Procurement Executive when the modification itself exceeds $100,000, when the modification will cause the contract to exceed $100,000, or when any proposed change under the modification results in an increase or decrease exceeding $100,000 in any of the individual cost elements of the existing contract.

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.
645.302 Providing facilities.
645.302-1 Policy.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.
645.608-6 Waiver of screening requirements.
645.610 Sale of surplus contractor inventory.
645.610-2 Exemptions from sale by GSA.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608-6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

PART 646—QUALITY ASSURANCE

Subpart 646.7—Warranties

Sec.
646.710 Contract clauses.
646.710-70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

PART 648—VALUE ENGINEERING

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

The Procurement Executive is the agency head for the purposes of FAR 48.102(a). The Procurement Executive is the agency head's designee for the purposes of FAR 48.102(e). The authority to extend the sharing base to include the entire contracting activity or any part of it, as prescribed in FAR 45.102(e), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.
652.100-70 Policy.
652.102 Incorporating provisions and clauses.
652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.
652.202-70 Definitions.
652.204-70 Security Requirements.
652.204-71 Security Requirements—Personnel.
652.214-70 Language Version.
652.214-71 Notices.
652.214-72 Authorization to Perform.
652.216-70 Ordering—Indefinite-Delivery Contract.
652.228-70 Indemnification.
652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.
652.232-70 Invoice Requirements.
652.232-71 Method of Payment (Electronic Funds Transfer).
652.237-70 Reports (Consulting Services).
652.242-70 Contracting Officer's Representative (COR).
652.242-71 Notice of Shipments.
652.242-72 Shipping Instructions.
652.246-70 Commercial Warranty.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.202-70 Definitions.

As prescribed in 604.201-70, insert the following clause in solicitations and contracts if the contract will be performed outside the United States.

Definitions (July 1988)

"American Embassy" and "Embassy" means the diplomatic or consular mission of the United States of America for which all supplies or services are provided under the contract.

"Department" means the Department of State, including all of its activities wherever located.

"Government" means the Government of the United States of America, unless specifically stated otherwise.

(End of clause)

652.204-70 Security Requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

Security Requirements (July 1988)

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume, 5, Chapter 900, "Policy and Procedural Security"). The Contracting Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.

(End of clause)

652.204-71 Security Requirements—Personnel.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

Security Requirements—Personnel (July 1988)

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

(End of clause)

652.214-70 Language Version.

As prescribed in 614.201-7-70(a), insert the following clause in solicitations and contracts effected and performed outside the United States, except when the Procurement Executive has approved a waiver of this clause.

Language Version (July 1988)

The English language version of this contract is the official version and binding on both parties.

(End of clause)

652.214-71 Notices.

As prescribed in 614.201-7-70(b), insert the following clause in solicitations and contracts entered into and performed outside the United States.

Notices (July 1988)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of Clause)

652.214-72 Authorization to Perform.

As prescribed in 614.201-7-70(c), insert the following clause in solicitations and contracts performed outside the United States.

Authorization to Perform (July 1988)

The Contractor warrants that (a) it has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of clause)

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

Ordering—Indefinite-Delivery Contract (July 1988)

The Government shall use one of the following forms to issue orders under this contract:

(a) Optional Form (OF) 347, Order for Supplies or Services;

(b) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher; or

(c) Department of State Form (DST) 1089, Order—Supplies or Services.

(End of Clause)

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

Indemnification (July 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged

negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

Excise Tax Ememption Statement for Contractors Within the United States (July 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

652.232-70 Invoice Requirements.

As prescribed in 632.111-70, insert the following clause in solicitations and contracts awarded to foreign vendors.

Invoice Requirements (July 1988)

(a) The Contractor shall submit its invoices to the Government official responsible for inspection and acceptance of the property or services. A proper invoice must include the following information:

(1) Contractor's name and mailing address (for payments by checks) or Contractor's name and bank account information (for payments by wire transfers);

(2) Invoice date;

(3) Contract number or other authorization for property delivered or services performed (including order number and contract line number);

(4) Description, quantity, unit of measure, unit price, and extended price of property delivered or services performed;

(5) Shipping and payment terms, e.g., shipment number and date of shipment, payment discount terms. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading;

(6) Name, signature, title, and telephone number of the Contractor's officer certifying the invoice;

(7) Name and address of the Contractor's officer to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment);

(8) Name (where practicable), title, telephone number, and mailing address of the person to be notified in the event of a defective invoice; and

(9) Any other information or documentation required by the contract (such as evidence of shipment).

(b) If an invoice does not comply with the above requirements, the Government official receiving the invoice pursuant to paragraph (a) of this clause shall notify the Contractor of the defect(s). After correcting the defect(s), the Contractor must then resubmit the invoice.

(End of clause)

652.232-71 Method of Payment (Electronic Funds Transfer).

As prescribed in 632.111-70, insert the following clause in solicitations and contracts effected outside the United States from foreign vendors when payments are to be made by electronic funds transfer.

Method of Payment (Electronic Funds Transfer) (July 1988)

(a) The Government shall make payments under this contract by electronic funds transfer through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this designation to the Contracting Officer or designee.

(b) For payment through TFCS, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the receiving financial institution receiving payment;

(2) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications system;

(3) Payee's account number at the financial institution where funds are to be transferred; and

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS);

(2) Number of account to which funds are to be deposited;

(3) Type of depositor account ("C" for checking, "S" for savings);

(4) If the Contractor is a new enrollee to the ACH system, a TFS 3881, "Payment Information Form," must be completed before payment can be processed.

(d) In the event the Contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official (Contracting Officer or designee) 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

652.237-70 Reports (Consulting Services).

As prescribed in 637.270, insert the following clause in solicitations and contracts for consulting services.

Reports (Consulting Services) (July 1988)

The Contractor shall submit all reports with covers that display the following information:

(1) Name and business address of the Contractor;

(2) Contract number;

(3) Contract dollar amount (including modifications);

(4) Type of award, i.e., full and open competition or statutory authority for other than full and open competition;

(5) Name of the individual who requested the consulting services, and the name and telephone number of the requesting individual's office; and

(6) The following statement: Any report prepared by the Department of State that is substantially derived from or substantially includes the contents of this report shall cite the contract number and contractor for this report.

(End of clause)

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert the following clause in solicitations and contracts when one or more contracting officer representatives are required.

Contracting Officer's Representative (COR) (July 1988)

The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer

and this authority is delegated in the designation.

(End of clause)

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

Notice of Shipments (July 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

Shipping Instructions (July 1988)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 100 lbs	¾" × 2¼".
101 to 250 lbs	⅞" × 2⅞".
251 to 400 lbs	⅞" × 3⅞".
401 to 600 lbs	⅞" × 4⅞" or 1" × 3⅞".

(b) Each box shall be lined with waterproof paper and shall be bound with ¾" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 1,000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 × 6-inch lumber placed flat and a center section of 2 × 4-inch lumber placed flat and then arranged in line to provide 10-inch forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in pounds and kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in the packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in pounds and kilograms shall be stenciled on the same side. (One kilogram equals 2.2046 pounds avoirdupois.) However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

652.246-70 Commercial Warranty.

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

Commercial Warranty (July 1988)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and to not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

PART 653—FORMS

Sec.

653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101-70 Policy.
653.107 Obtaining forms.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.302 Optional forms.
653.303 Agency forms.
653.302.127 Optional Form 127, Receiving and Inspection Report.
653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher.
653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.
653.303-DST-1089 Department of State Form 1089, Order—Supplies or Services.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

The forms in FAR Subpart 53.2 or in Subpart 653.2 shall be used as precribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

As provided in FAR 53.213(e), the following forms are approved for use in lieu of Optional Forms 347 and 348.

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (see 613.505-2(a)(1)).

(b) Department of State Form (DST) 1089, Order—Supplies or Services (see 613.505-2(a)(2); also see 613.505-2(c)(2)

regarding replacement of the "Terms and Conditions Applicable to Purchase Orders," which are located on the reverse of the original copy of the DST 1089).

(c) When using OF 206, contracting activities may use Optional Form 127, Receiving and Inspection Report, for that purpose (see 613.505–2(c)(1)).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.302 Optional forms.

This section illustrates the optional forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the optional form numbers.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

BILLING CODE 4710-24-M

653.302.127 OPTIONAL FORM 127, RECEIVING AND INSPECTION REPORT

RECEIVING AND INSPECTION REPORT	METHOD OF ACQUISITION	DOCUMENT NUMBERS
	☐ PURCHASED ☐ RENTED	REPORT NO.
	☐ CONSTRUCTED ☐ LOANED	P.O. NO.
RECEIVED FROM	☐ DONATED ☐ INVENTORY OVERAGE	REQUISITION NO.
NAME AND ADDRESS	☐ (OTHER)	TRANSFER AUTHORITY NO.
	APPROPRIATION	CONTRACT NO.
	ALLOTMENT	JOB NO.
POINT OF SHIPMENT / GBL NO.	OBJECTIVE CLASS	

ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT

CERTIFICATE OF RECEIPT		INSPECTOR'S CERTIFICATE		
I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED		☐ COMPLETE	☐ PARTIAL	☐ FINAL
NAME (Type or Print)	OFFICE SYMBOL	☐ OVER	☐ SHORT	☐ DEFECTIVE MATERIAL
SIGNATURE	DATE	(USE REVERSE FOR COMMENTS)		

50127-102 NSN 7540-00-138-9185

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA

653.302.206 OPTIONAL FORM 206, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER
(For use in foreign countries only)

D.O. Vou. No.

Bu. Vou. No.

Department or Establishment: U.S.

Purchase Order No.

Prepared at (place) (date)

PAID BY

Purchaser: THE UNITED STATES GOVERNMENT, DR.

Seller (Payee)

Address of seller

Contract No. (dated)

Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:

To | at

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE Cost	UNIT PRICE Per	AMOUNT

Use continuation sheet(s) if necessary.

Ordering Officer (Signature)	Approp. / Allot.	Funds Available:	
Name:	Obl. No.	Name:	
Title:	Amt.	Title:	TOTAL

I certify that the ordered items listed were received on _____ (date) except as follows:

Signature

Name:

Title:

PAYMENT:

☐ Complete

☐ Partial

☐ Final

Amount billed, as per attached bill(s)	
Differences	
Amount verified correct for	
Prepayment Audit (Signature or initials)	

Approved for $

Exchange rate to $

Pursuant to authority vested in me, I certify this voucher correct and proper for payment.

Signature of Authorized Certifying Officer

Name:

Title:

ACCOUNTING CLASSIFICATION

Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object	Amount

PAID BY

Check No. dated , 19 , for $ on Treasurer of United States.

Check No. dated , 19 , for on

Cash on 19

Payee

Title of Payee:

OPTIONAL FORM 206
(FORMERLY FS-455)
MARCH 1973
DEPT. OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.

2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."

3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.

4. All communications concerning this order must refer to order number and be addressed to the originating office.

5. Discount terms, if any, must be shown on all bills.

653.302.206A OPTIONAL FORM 206A, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER—CONTINUATION SHEET

Form approved by
Comptroller General, U. S.
March 19, 1953.

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Continuation Sheet

U. S. ..... Sheet No. ..... of Bureau Vou. No. .....
(Department or establishment)
Purchase Order No. .....

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT	
			Cost	Per		

OPTIONAL FORM 206A
(FORMERLY FS-455A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE 1975 O-579-102

50206-201

653.303-DST-1089 DEPARTMENT OF STATE FORM 1089, ORDER—SUPPLIES OR SERVICES

DEPARTMENT OF STATE
WASHINGTON, DC 20520

ORDER — SUPPLIES OR SERVICES
(Subject to terms and conditions on reverse side)

00 | Page of Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS

ATTENTION:
PHONE:

1. Form	2. CONTRACT NUMBER	3. C	4. DEST	5. PSC	6. SHIPPING INSTRUCTIONS	7. ORDER NUMBER
						—

8. Comm	9. GBL NUMBER	10. Type	11. Date P	12. REQ OFFICE	13. Date Rec.	AI	14. Date Sig.

15. DESCRIPTION	16. AMOUNT

17. APPROPRIATION	ALLOTMENT	OBLIG.	ORG.	FUNC.	OBJ.	S OBJ.

18. CONTRACTOR	19. CONSIGNEE AND DESTINATION
TO DUNS ID ZIP	SHIP TO 20. ULTIMATE DESTINATION

LINE ITEM	CATALOG/NSN	S. ID	SUPPLIES OR SERVICES	Delivery Date	U O I	NO. OF UNITS	UNIT PRICE	TOTAL

21. FOB POINT/FAS POINT	22. DISCOUNT	23. ISSUER'S NAME	24. ISSUER'S PHONE

BILLING INSTRUCTIONS

Contractor's invoice shall be submitted in an original and one copy to:
Office of Finance — General Claims
P.O. Box 9487
Rosslyn Station
Arlington, VA 22209

Invoices must show the Department's 10 digit order number, time payment discount (even if net), description of each item, quantity, unit cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.

When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.

25. CONTRACTING/ORDERING OFFICER

Signature Date

FORM DST - 1099-4-81

ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1 INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government

2 VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract

3 DISCOUNTS - (a) Time discounts will be computed from (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery (b) Payment will be deemed to have been made on the date which appears on payment checks

4 DISPUTES - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act")). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4

5 FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies

6 CONVICT LABOR - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C 4082(c) (2)) and Executive Order 11775, December 29, 1973

7 OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee

9 FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order

10 SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding $2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract

11 The following terms and conditions are applicable to purchases in excess of $2,500 (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26 1976 (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12 303 (c) Service Contract Act of 1965 - (Services contracts in excess of $2,500) Federal Procurement Regulation 1-12.904-1

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number brief description of contents, including form number if any quantity and vendor's name

Receiving clerk may reject any deliveries which do not bear such identification

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to the person and organization who signed the order Such documents MUST refer to the departments order number

BILLING CODE 4710-24-C

SUBCHAPTER I—DOS SUPPLEMENTATIONS

PART 670—SPECIAL CONTRACTING PROGRAMS

Subpart 670.1—International Narcotics Control Program Acquisitions

Sec.
670.101 Scope of subpart.
670.102 Policy.
670.103 Applicability.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 670.1—International Narcotics Control Program Acquisitions

670.101 Scope of subpart.

This subpart prescribes policies for acquisitions under the International Narcotics Control (INC) Program, which is authorized by section 481 of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2291).

670.102 Policy.

(a) The Procurement Executive is responsible for INC Program acquisitions. In this capacity, the Procurement Executive has the specific authority to enter into and administer INC funded contracts. Unless otherwise directed by the Secretary of State or provided in DOS regulations, the Procurement Executive shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of INC funded contracts, including contracts with individuals for personal services abroad.

(b) To accomplish the purposes of the INC Program, the following implementing authorities and regulations may be utilized to the extent the Procurement Executive deems necessary or appropriate in the performance of the acquisition function.

(1) The Foreign Assistance Act of 1961, as amended.

(2) Sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965.

(3) Chapter 7 of this Title, Agency for International Development Acquisition Regulation, 48 CFR Ch. 7, including any amendments thereto.

(c) Authority to perform functions prescribed in this subpart may be redelegated.

670.103 Applicability.

The provisions of this subpart apply to acquisitions for the INC Program both within and outside the United States.

[FR Doc. 88–15466 Filed 7–8–88; 8:45 am]
BILLING CODE 4710–24–M