

annual fees are due. The Finance Office has requested that the annual fee due date be changed from January 1 to February 28 to allow their automated systems to be uploaded with December 31 year-end information. The revision of 7 CFR 3565.53(b) will facilitate the automation of the annual fee calculation process.

List of Subjects in 7 CFR Part 3565

Guaranteed loans, Low and moderate income housing, Surety bonds.

For the reasons set forth in the preamble, Title 7, Chapter XXXV of the Code of Federal Regulations is proposed to be amended as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Guarantee Requirements

2. Section 3565.53(b) is revised to read as follows:

§ 3565.53 Guarantee fees.

(b) *Annual guarantee fee.* An annual guarantee fee of at least 50 basis points (one-half percent) of the outstanding principal amount of the loan will be charged each year or portion of a year that the guarantee is in effect. This fee will be collected on February 28, of each calendar year.

* * * * *

Dated: September 15, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 331

[Docket OST-2006-25906]

RIN 2105-AD61

Procedures for Reimbursement of General Aviation Operators and Service Providers in the Washington, DC Area

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 30, 2005, President Bush signed into law the Transportation, Treasury, Housing and

Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 (Pub.L. 109-115, 119 Stat. 2396, hereafter the Act, or the 2006 Appropriation Act). Section 185 of the Act authorized the Department of Transportation to provide reimbursement to fixed-based general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports, for the direct and incremental financial losses they incurred while the airports were closed due to Federal Government actions taken after the terrorist attacks on September 11, 2001. The airports are: Ronald Reagan Washington National Airport; College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. A total of up to \$17,000,000 was appropriated for this purpose. This proposed rule would establish the eligibility requirements and application procedures for those who may qualify for assistance under this statute.

DATES: Comments should be received by November 3, 2006.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST-2006-25906, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. We request that, in order to minimize burdens on the dockets staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following internet address: <http://dms.dot.gov/>. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

FOR FURTHER INFORMATION CONTACT:

James R. Dann, U.S. Department of Transportation, Office of General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590. Telephone 202-366-9154. Data sources to assist applicants in preparing portions of their applications are

available at the Department of Transportation, Office of the Secretary's Web site at <http://ostpxweb.dot.gov/aviation/index.html>, under "Programs."

SUPPLEMENTARY INFORMATION: Following the terrorist attacks on the United States on September 11, 2001, general aviation activity in the Washington, DC metropolitan area was suspended. Five airports were most affected: Ronald Reagan Washington National Airport (DCA); College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; and Washington South Capitol Street Heliport in Washington, DC. General aviation operations remain limited at DCA and the three Maryland airports, and the South Capitol Street Heliport is now used exclusively by the Washington DC Metropolitan Police. Because of the reduction in general aviation activity at these locations, the fixed-based operators and service providers that supported general aviation were also affected. In addition, some such entities have had to incur additional costs associated with new security regulations in order to keep their businesses functioning.

Soon after the terrorist attacks, Congress enacted the Air Transportation Safety and System Stabilization Act, Public Law 107-42 (Sept. 22, 2001) (the Stabilization Act). The Stabilization Act directed that compensation be provided to "air carriers" for the direct losses they incurred as a result of the Government's orders halting air traffic, and the incremental losses they incurred between September 11 and December 31, 2001, as a direct result of the terrorist attacks. Under this authority, approximately \$4.6 billion has been distributed to qualifying carriers, providing them assistance as they sought to avoid bankruptcy and recover financially in the aftermath of September 11. Such carriers were also made eligible for loan guarantees under a different title of the Act. However, as noted, relief was limited in the statute to "air carriers," a term defined at 49 U.S.C. 40102. Because the fixed-based operators and service providers at issue here did not fall within that definition, they were not eligible for either compensation or loan guarantees under the Stabilization Act.

In 2003, the United States House of Representatives Committee on Appropriations requested that the Department of Transportation prepare a report detailing the documented financial losses by holders of real property leases at the five affected

airports that were attributable to the Federal actions since September 11, 2001. (House Report 108–243, July 30, 2003, p. 8.) The Committee stated that such a report would assist the Congress in considering “potential federal reimbursement for a portion of these unusual financial losses.” In October, 2005, the Secretary of Transportation submitted to the Committee the requested report, which was entitled: *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report* (October 2005 DOT study). A copy of this Report has been placed into Docket 2006–25906.

The October 2005 DOT study identified sixteen general aviation leaseholders at the five airports, and estimated the financial losses that each incurred during its study period (which ran from September 11, 2001 to January 23, 2004) due to the Federal actions taken after the terrorist attacks. The estimates reflected the difference in net income between what the companies projected for the study period and the actual net income for that period, and included both losses in net income and one-time costs attributable directly to compliance with new restrictions or regulations resulting from the terrorist attacks. In formulating its estimates, the Department’s consultant relied primarily on voluntary information provided by each entity, and while interviews were conducted to confirm the general reasonableness and consistency of the numbers provided, no independent analysis, audit or certification was conducted. Therefore, the October 2005 DOT study advised that these estimates were merely preliminary and meant solely to inform Congress in determining whether and in what amount to appropriate funds to reimburse these general aviation entities. The October 2005 DOT study also indicated that, if compensation were to be made available, “the financial data establishing the basis for any payment, especially forecast revenue, cost and net income, should * * * be subject to a more rigorous verification regime.” (*Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 3.*)

The total estimated financial losses for the period reviewed were \$10,443,936, with more than half of that amount being reported for one firm, Signature Flight Support. The estimates were in current dollars and reflected no consideration for the time value of money.

On November 30, 2005, the Transportation, Treasury, Housing and

Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006, became law. Section 185 of the Act provides for the reimbursement of “fixed-based general aviation operators and the providers of general aviation ground support services” at the five cited airports for the “direct and incremental financial losses incurred while such airports were closed to general aviation operations, or as of the date of enactment of this provision in the case of airports that have not reopened to such operations, by these operators and service providers solely due to actions of the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001.” The Act provides up to \$17 million to reimburse these general aviation entities; however, it states that, of the \$17 million provided, an amount not to exceed \$5 million, if necessary, is to be available on a pro rata basis to fixed-based general aviation operators and the providers of general aviation ground support services located at the three Maryland airports: College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland.

Section 185 further states that the appropriated funds included the cost of “an independent verification regime;” that no funds shall be obligated or distributed to such general aviation entities until an independent audit is completed; that losses incurred as the result of violations of law, or through fault or negligence of such entities or of third parties (including airports) are not eligible for reimbursement; and that the obligation and expenditure of funds are conditional upon full release of the United States Government for all claims for financial losses resulting from such actions.

Section-by-Section Analysis

Section 331.1 What is the purpose of this Part?

This section states the proposed purpose of part 331, which is to carry out the statutory provisions of the Act with respect to compensating fixed-based general aviation operators and providers of general aviation ground support services at five metropolitan Washington, DC area airports.

Section 331.3 What do the terms used in this part mean?

This definitions section proposes to incorporate terms from the Act or other existing sources. This section also

proposes to define additional terms necessary to implement the procedures to provide reimbursement under the Act.

Entities that meet the definition of a “fixed-based general aviation operator” or a “provider of general aviation ground support services” with operations at one or more of the five named airports on September 11, 2001 would be eligible under the plain statutory language to apply for reimbursement of eligible losses under the 2006 Appropriation Act.

The Department understands that a “fixed based general aviation operator,” (FBO), customarily refers to an entity based at a particular airport that provides services and support to general aviation, which may include fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. We expect that most, if not all, eligible FBOs will have been leaseholders identified in the October 2005 DOT study. The Department would tentatively further define a “provider of general aviation ground support services” as a non-FBO operating at an airport that supplies such or similar services exclusively or predominantly to support general aviation activities, extending as well to flight schools, security services, aircraft and avionics maintenance, etc. The reference to “services” in the statute would seem to preclude non-FBO entities from qualifying that provided only products to general aviation, e.g., a parts supplier.

The Department notes that the October 2005 DOT study performed under House Report 108–243 was limited to “holders of real property leases” at the airports. Because the 2006 Appropriation Act used different language to describe the entities that were to be eligible for reimbursement, the Department believes that reimbursement for losses is not necessarily limited to only those sixteen entities that were identified in the October 2005 DOT study. As the Department expects that case-by-case determinations may be necessary, we propose that any entity that applies for reimbursement under the Program describe itself, the services it provides or provided, the airport or airports at which it provided those services, and certify that it meets the regulatory definitions, in order to facilitate an eligibility determination by the Department.

We also propose common usage definitions for “losses” and “incurred,” as we did in the regulations

implementing the Stabilization Act. *See* 67 FR 54062 (August 20, 2002). Thus, “losses” refer to something that is gone and cannot be recovered, and “incurred” means to become liable or subject to (as to incur debt). Applying these definitions, for example, a temporary loss that is recovered later, or is expected to be recovered later, would not be eligible for reimbursement.

The Department proposes to define the statutory phrase “direct and incremental losses” to mean those losses that resulted from the Federal Government’s closure of the five Washington area airports to general aviation operations. “Direct and incremental losses” would include losses incurred on September 11, 2001 through the end of the eligibility reimbursement period for each airport. The Department proposes to read “direct and incremental losses” as a single category because of the difficulty in apportioning losses between direct losses and incremental losses while an airport was closed.

As discussed in more detail in Section 331.13, the eligibility period is different for each of the five Washington area airports. For the reasons set forth in Section 331.13, the Department is proposing that the term “closed” or “closure” be defined so as to carry out the intent of Congress in establishing the eligible period for reimbursement for each airport. For Washington National Airport, “closed” or “closure” would mean the time between September 11, 2001 and the date that general aviation operations were generally permitted to resume. For the Washington South Capitol Street Heliport, which was closed at the date that Section 185 of the Act was enacted, “closed” or “closure” would mean the time between September 11, 2001 and November 30, 2005. For the three Maryland airports, because general aviation operations resumed more gradually, “closed” or “closure” would mean the time between September 11, 2001 and the date that transient traffic was generally permitted to return.

Finally, the Department proposes that, for purposes of determining eligibility under the Act, “forecast” should be defined as an objective and reliable projection of the revenue that would have been earned and the expenses that would have been incurred during the eligible reimbursement period had the attacks of September 11, 2001 not occurred. The Department believes that applicants either prepared such forecasts before September 11, 2001, or have the ability to prepare or reconstruct such reasonable forecasts based on financial records generated

and maintained in the ordinary course of business.

Section 331.5 Who may apply for reimbursement under this part?

This part specifies the applicants eligible for reimbursement under the Act. The Department proposes that applicants submitting claims under the Act for losses incurred at two or more airports complete separate applications. For example, if an applicant provided fixed-based general aviation or general aviation ground support at Ronald Reagan Washington National Airport and College Park Airport in College Park, Maryland, then the applicant would complete two applications.

Section 331.7 What losses will be reimbursed?

Under subsection (a) the Department proposes the method that would be applied to determine reimbursement. The Department proposes that losses should be measured under the same general approach utilized in the October 2005 DOT study, *i.e.*, the difference in net income between what an eligible applicant forecast (or would have reasonably expected) for the applicable reimbursement period, and the actual net income it earned for that period. The Department deemed this “lost profits” approach to be the most reasonable one for purposes of its October 2005 study, and it was the same approach that was utilized in providing compensation to air carriers under the Air Transportation Safety and System Stabilization Act. Thus, the Department has had considerable experience in analyzing and approving compensation claims under such a regime. Moreover, since Congress likely relied on the analysis and estimates made by the Department and the Department’s consultant in the October 2005 DOT study when it enacted the 2006 Appropriation Act, this approach would seem most consistent with Congress’ expectations regarding the cost to be incurred for the program.

Under subsection (b) the Department proposes that if applicants make a claim for extraordinary, non-recurring, or unusual adjustments, they would also be requested to demonstrate that such losses were fully attributable to the Federal Government’s actions, that the claim be made in conformity with Generally Accepted Accounting Principles (GAAP), that the expenses of the loss were fully borne within the applicable statutory reimbursement period, that the charge was not discretionary in nature, and that reimbursement would not be duplicative of other relief. The

Department notes that it appears that Congress intended one-time costs that were necessarily incurred in order to comply with Federal Government security requirements to be reimbursable, and we propose that they be. However, under the Air Transportation Safety and System Stabilization Act compensation program, a number of applicants sought reimbursement for various types of extraordinary, non-recurring, or unusual charges, which DOT generally found not to be eligible. For example, the Department typically rejected claims for impairment of long-lived assets, relying in part on guidelines published by the Financial Accounting Standards Board (FASB) recognizing that “impairment of long-lived assets as a result of the September 11 events would in many cases be impossible to measure separately from impairment due to the general economic slowdown that was generally acknowledged to be under way.” (Emerging Issues Task Force Meeting Minutes, at 4.) Therefore the Department is proposing that extraordinary, non-recurring, or unusual adjustments be separately explained by each applicant in order to determine eligibility. Each such claim would prompt a case-by-case review to determine whether it should be reimbursed under the Act, using the same type of analysis that was employed in the Air Transportation Safety and System Stabilization Act cases.

Subsection (c) proposes that temporary losses recovered after the terrorist attacks of September 11, 2001, or that applicants expect to recover, should not be eligible for reimbursement.

The Department proposes in subsection (d) that if an applicant engaged in any aviation or non-aviation income-producing activities after September 11, 2001, such income should mitigate its losses and so reduce reimbursement. If, for example, an applicant after September 11, 2001 contracted out its services for some of its maintenance and avionics repair work to other carriers or at other airports, that income would serve to reduce its reimbursement under this Act.

Similarly, the Department proposes in subsection (e) that so-called “cost savings” cannot be claimed and manipulated into a basis for additional reimbursement. Such “cost savings” arise from instances in which an applicant achieves after September 11 a reduction in actual expenses as compared to its forecast expenses in expense categories it claims were not

affected by the Federal Government's closure of airports. We assume that potentially eligible general aviation entities would, like most businesses, try to maintain strict controls on expenditures, especially in cases in which revenue shortfalls are being anticipated (such as after the terrorist attacks). We perceive this as simply good business practice, so that these savings should reduce reimbursement needs. See 67 FR 18473 (Apr. 16, 2002); *Federal Express Corp. v. Mineta*, 434 F.3d 597 (DC Cir., 2006).

The Department proposes in subsection (f) that applicants not be reimbursed for the lost time value of money. As noted above, the October 2005 DOT study questioned whether reimbursement pursuant to Section 185 should account for the time value of money, through payment of interest on lost profits for the period of time the funds were not available for use. The Department has tentatively determined that, as a legal matter, it is precluded from payment of interest under the circumstances present here. See, e.g., *United States v. Alcea Bank of Tillamook*, 341 U.S. 48, 49 (1951) (noting that, "[i]t is the 'traditional rule' that interest on claims against the United States cannot be recovered in the absence of an express provision to the contrary in the relevant statute or contract"). We are aware of no exceptions that would apply here so as to make such payment here allowable.

The Department also proposes to exclude lobbying fees and attorneys' fees in subsection (g). The October 2005 DOT study did not address the compensability of reasonable lobbying and attorney's fees. However, a question has arisen as to whether the program should provide reimbursement for those professional service fees, such as those incurred in seeking and obtaining the legislative relief ultimately embodied in Section 185. The Department proposes that such fees not be eligible for reimbursement. We note initially that a Federal statute (31 U.S.C 1352) prohibits using appropriated funds to compensate lobbying costs for specific activities. To implement this provision, the Department adopted regulations as generally prescribed by the Office of Management and Budget (OMB), that broadly limit the expenditure of appropriated funds by recipients of "a Federal contract, grant, loan, or cooperative agreement" for lobbying costs. See 49 CFR 20.100. While "reimbursement" is not included among the covered Federal actions, the Department believes that it should be here, in order to achieve consistency with the spirit and intent of these

provisions, and therefore would not reimburse with appropriated funds expenditures for such specified activities. Accordingly, such costs would need to be broken out and excluded from an applicant's claim.

In order to assist the Department evaluate the reasonableness of claims it receives from applicants, it proposes in subsection (h) that the applicants' calculations of revenues, expenses and income be based on financial documents customarily maintained by the applicants in the course of conducting business.

Section 331.9 What funds will the Department distribute under this part?

The Department proposes to disburse up to the full amount of reimbursement it determines is payable to applicants under section 185 of the Act.

Section 335.11 What are the limits on reimbursement to operators or providers?

Congress has limited reimbursements to losses incurred as a direct result of actions by the Federal Government and to losses incurred within a finite period of time. As discussed above, even if losses may be properly reported under generally accepted accounting principles (GAAP) within that period, if they are actually experienced over a longer or different period of time, and/or if they are not fully attributable to the Federal Government's actions to close airports, they may not be properly reimbursable under the Act.

The Department proposes in subsection (a) to reimburse applicants subject to the subpart C set-aside for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The Department further proposes that the amount available to each applicant be subject to the Department's cost of independently verifying claims for reimbursement, as explained in Section 331.17.

In subsection (b), the Department proposes that, if an overpayment is made to an applicant for any reason, the Federal Government would collect the overpayment amount in accordance with the Federal Claims Collection Act of 1996 (31 U.S.C. 3701 *et seq.*).

Section 185 requires that, as a condition for payment, parties provide a full release to the United States from all claims for financial losses resulting from actions of the Federal Government following the terrorist attacks of September 11, 2001. The Department

proposes in subsection (c) to utilize a standard release form.

Section 331.13 What is the eligible reimbursement period under this part?

Section 185 provides funds to reimburse GA entities for eligible losses "incurred while such airports were closed to general aviation operations, or, if an airport has not reopened to such operations, as of the date of enactment of Public Law 109-115" (*i.e.*, November 30, 2005). Because four of the five the airports in question were subject to differing levels of restriction in general aviation activity over time, the language "while such airports were closed to general aviation operations" requires the Department to interpret whether the eligible period is that during which the airports were closed to *all* general aviation operations, or to *some* or *any* general aviation operations.¹

As background, the period of closure for all five airports began on September 11, 2001, when immediately after the terrorist attacks, the Federal Aviation Administration (FAA) prohibited all aircraft operations within the territorial airspace of the U.S. Exceptions were made only for certain military, law enforcement, and emergency-related aircraft operations. This general prohibition was lifted in part on September 13, 2001.

Due to continuing security concerns in Washington, DC airspace, restrictions remained in place on aircraft operations in the DC metropolitan area. On October 4, 2001, limited air carrier operations were permitted to resume at Ronald Reagan Washington National Airport ("DCA"), but general aviation activity there and elsewhere in the metropolitan area was limited to repositioning of aircraft and operations under limited waivers. Under Notice to Airmen (NOTAM) 1/3354 of December 19, 2001, the FAA continued with minor exceptions the total prohibition on all Part 91 flight operations within 15-miles of the Washington Monument.

At DCA, official State and Federal government operations, and other flights operating under limited waivers, generated about 20 general aviation flights per month through 2004. These

¹The Department's GRA Study considered as "direct losses" those losses incurred during the period of "full" closure—through March, 2002—and as "incremental losses" those losses incurred after the reopening of the airports that were nonetheless attributable to the Federal actions taken as a result of the September 11 terrorist attacks. The language of section 185 limits reimbursement to the direct and incremental losses incurred while the airports were "closed" to GA operations, leaving unsettled whether Congress was altering the time periods for which calculations of loss would be made from the approach taken in the Study.

flights required special security arrangements, including pilot and passenger background checks and the presence of law enforcement personnel on board. Because of these restrictions, much DCA general aviation activity migrated to Washington Dulles Airport, Baltimore—Washington International Airport, or other facilities. On May 25, 2005, the Department of Homeland Security proposed a broader reopening of DCA to various GA operations, including corporate aircraft and charter flights. Up to 48 GA flights per day would be allowed, although only for operations from authorized originating “gateway” airports. Operations were subject to stringent security measures, including: Advanced registration and qualification of operators and crews; Transportation Security Administration (“TSA”) inspection of crews and passengers; submission of manifests 24 hours in advance of the flight; enhanced background checks; and the presence of a law enforcement officer on board each flight. On October 18, 2005, flights under the new rules resumed at DCA.

The FAA’s Special Federal Aviation Regulation (SFAR) 94, issued as a Final Rule on February 19, 2002 (67 FR 7537), set out procedures under which College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field (the “three Maryland airports”) could be partially reopened to general aviation traffic. SFAR 94 permitted the three Maryland airports to develop security procedures that, if approved by the FAA Administrator, would allow pilots that had been based there to resume some operations. These procedures encompassed such matters as identification of an airport security coordinator, maintenance of a record of all individuals and aircrafts authorized to operate from the airport, implementation of robust security monitoring and security awareness procedures, etc. Although SFAR 94 allowed the resumption of some operations under tightly controlled security requirements, based pilots were still unable to conduct pattern operations or flights to another affected airport. In addition, transient aircraft operations continued to be prohibited. Based on SFAR 94, and the FAA’s NOTAM 2/1257 that was published on February 14, 2002, College Park and Potomac airports were able to reopen to limited resident GA operations on February 23, 2002. Washington Executive/Hyde Field followed on March 2, 2002.

SFAR 94 was reissued on February 14, 2003 for an additional two years, and, on February 10, 2005, new rules were issued that authorized the resumption of transient operations on a restricted basis. 70 FR 7150. Under these restrictions, pilots were required to: Submit background information on themselves, including fingerprints; to undergo a terrorist threat assessment, criminal records check, and check of his or her FAA record for certain violations; and be briefed on procedures for operating at the airport. Further, pilots who wished to operate aircraft from or to any of the three Maryland airports were required to file a flight plan in advance, obtain air traffic control clearances and a discrete transponder code, and follow the arrival and departure procedures that were required by the FAA. See 49 CFR Part 1562. The flights into the three Maryland airports under these restricted procedures began after these rules became effective on February 13, 2005.

The restrictions on general aviation operations in Washington airspace have obviously translated into a significantly lower volume of operations than had been in place prior to the terrorist attacks. At DCA, in the year 2000, there had been 60,225 GA operations. In contrast, the Department of Homeland Security stated that, between January of 2003 and March of 2004, there had been a total of 146.

The October 2005 DOT study found that local operations at College Park Airport fell from 19,657 in 2001 to 2,500 in 2002 and 2,000 in 2003. Itinerant operations were reported as dropping from 4,800 in 2001 to zero in both 2002 and 2003.

At Potomac Airfield, the October 2005 DOT study reported local and itinerant operations as staying constant for the three years, but considered that such data “may not be totally accurate because they show exactly the same number of operations each year.”

Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area Final Report, at fn. 11.

At Washington Executive/Hyde Field, the October 2005 DOT study found that local operations were constant at 34,580 in 2001 and 2002 (which conclusion may suffer from the same inaccuracy in reporting as affected Potomac Airfield) but fell to 6,970 in 2003. As to itinerant operations, the October 2005 DOT study reported a fall from 1,900 in 2001 to 30 in 2002 and 10 in 2003.

The Washington South Capitol Street Heliport is now closed to GA

operations. According to the Department’s consultant, the Washington Metropolitan Police Department helicopter operation unit is now the exclusive user of the heliport.

The reduction in traffic volumes has translated into financial losses for the fixed-based general aviation operators and providers of general aviation ground support services at the airports. The October 2005 DOT study reported financial losses for the general aviation leaseholders at the airports as being most severe in 2002, cumulating at almost \$5.3 million. However, the losses extended as well into 2003, cumulating at over \$3.4 million and into the early part of 2004.

In construing the language of section 185 as to the period each of the five airports was “closed to general aviation operations,” one approach would be for the Department to consider the period of closure to run until the first general aviation operations were permitted (on other than the special waiver, highly restricted basis in effect immediately after September 11, 2001). For DCA, that would be until October 18, 2005; for College Park and Potomac airports it would be until February 23, 2002; and for Washington Executive/Hyde Field, it would be until March 2, 2002. (For Washington South Capitol Street Heliport, it seems clear that the period of reimbursement eligibility would run for the full period from September 11, 2001 to November 30, 2005.) Another option would be to consider the three Maryland airports “closed” until the airports were more broadly reopened to include transient traffic, if even on a restricted basis, *i.e.* February 13, 2005. A final alternative would be to interpret the language to extend the time to the full September 11, 2001 to November 30, 2005 period, on the basis that some of the pre-September 11 general aviation traffic had not returned due to the restrictions, and so the airports might be thought of as not being “fully open” even to the present day.

The Department has tentatively determined that the respective periods of eligibility should be from September 11, 2001 until October 18, 2005 for DCA; until February 13, 2005 for the three Maryland airports, although limited for Washington Executive/Hyde Field as discussed below; and until November 30, 2005 for the Washington South Capitol Street Heliport. Comments on these proposed timeframes are welcomed. The following chart sets forth the proposed periods of eligibility for reimbursement:

Airport	Period of eligibility for reimbursement	
	Begin date	End date
Ronald Reagan Washington National Airport	September 11, 2001 ..	October 18, 2005.
College Park Airport in College Park, Maryland	September 11, 2001 ..	February 13, 2005.
Potomac Airfield in Fort Washington, Maryland	September 11, 2001 ..	February 13, 2005.
Washington Executive/Hyde Field in Clinton, Maryland	September 11, 2001	May 16, 2002.
Washington South Capitol St. Heliport in Washington, D.C.	September 29, 2002 ..	February 13, 2005.
	September 11, 2001 ..	November 30, 2005.

In so proposing, we considered that Congress must not, at the time it enacted section 185, considered all five of the airports to still be “closed.” If it did, it would simply have provided that the period for reimbursement would extend through the date the statute was enacted. To give meaning to the phrase “while closed to general aviation operations” in the Act, at least one of the airports must have been thought of as having reopened prior to the date of enactment. Of the remaining two approaches, we have tentatively decided to use the February 13, 2005 date for the three Maryland airports, rather than the alternative dates in 2002. The GA entities potentially eligible for reimbursement at the three Maryland airports continued to sustain serious financial losses well past the dates that the airports were reopened for some resident based operations, and it seems inconsistent with the clear remedial purpose of section 185 to restrict reimbursement only for losses incurred by these entities through February or March of 2002. Moreover, given these continuing financial impacts, it seemed inequitable to permit reimbursements at DCA over a four year period, but restrict such reimbursements at the three Maryland airports for less than six months. And, although restrictions continue at the three Maryland airports, they do as well at DCA, and similar treatment among them would seem to be best achieved by using the February 13, 2005 and October 18, 2005 dates.

The Department notes that section 185 also provides that losses incurred as a result of violations of law, or through fault or negligence, of such operators and service providers or of third parties (including airports) are not eligible for reimbursement. In this connection, the Department understands that Washington Executive Airport/Hyde Field was reclosed on May 17, 2002, because of a security violation, and not reopened again until September 28, 2002. See 70 FR 45256 (Aug. 4, 2005). The Department therefore tentatively believes that that period must be excluded from the reimbursement calculus, only for Washington Executive Airport/Hyde Field. The Department

also believes that Potomac Airfield was closed from November 1 to December 16, 2005 for a violation of its security program. However, because that period would be outside the tentative reimbursement period of September 11, 2001 to February 13, 2005, reimbursements under this program would not be affected. The Department would welcome comments on this issue, particularly as to whether these exclusions should extend to other periods or situations.

Section 331.15 How will other grants, subsidies, or incentives be treated by the Department?

The Department understands that Potomac Airfield, College Park Airport, and Washington Executive Airport/Hyde Field, at least, received Federal grants under the Airport Improvement Program to reimburse them for the cost of operations and capital improvements associated with implementing security programs. State and local authorities may have provided grants as well. The Department is proposing that any applicants who received, directly or indirectly, post-September 11 grants report them as revenues, because such grants should have the effect of reducing reimbursable losses. The Department is also proposing to add a question on receipt of any such grants in the Background and Eligibility Form to ensure proper focus on this issue.

Section 331.17 How will the Department verify and audit claims under this part?

This part proposes the method by which the Department would handle verification and auditing of claims. It is clear that Congress intended that these appropriated funds be used carefully and responsibly to reimburse only eligible entities for their eligible losses. To that end, section 185 would provide funds for an “independent verification regime,” and would require that an independent audit be completed before funds were distributed to eligible general aviation entities. Accordingly, the Department’s Office of the Inspector General (OIG) was consulted as to how to most efficiently and effectively

implement this mandate. In part because there may be a wide range in the dollar amount of claims, we are proposing, with OIG concurrence, a flexible approach to achieve Congress’s objectives. First, all applicants would be required to certify the accuracy and completeness of their claims, under penalty of law. The Department has considerable experience with such certification requirements, can refer suspected violations to the Department of Justice, and itself has an enforcement program under authority of the Program Fraud and Civil Penalties Act (31 U.S.C. 3801 note, Pub. L. 99–509; 49 CFR Part 31). For verification purposes, applicants would also be required to retain all financial records for the period covered by their claim, as well as all data used in support of their claim (including actual monthly result data from 1999 forward).

Department staff including attorneys, accountants, and analysts, who have extensive experience in reviewing the financial data of aviation firms, would initially review each claim in detail, contacting the individual applicants and consulting with OIG as questions arise in order to verify the accuracy of the information provided. Larger claims, and any questioned claims, would be subject to individual audits. The Department proposes that this auditing process should be flexible. Where an audit is warranted, the Department would forward the claim to either the OIG or an independent auditor. Claims believed to be fraudulent would be referred to the Department of Justice for possible criminal or civil enforcement actions. The Department believes that this process, relying on the audit capabilities of the OIG and/or independent auditors, and the enforcement capabilities of both DOT and the Department of Justice, would meet Congress’ intent that only meritorious claims be reimbursed.

Under section 185, expenses necessitated by independent verification and auditing activities may be paid with funds appropriated in the Act. While the Department does not anticipate that the verification activities performed by its analysts would necessitate payment

from the appropriated funds, the Department recognizes that the costs of an audit, particularly for larger claims, could be considerable. Therefore, the Department is proposing to retain the flexibility to recover the costs of audits from the amount of reimbursement that eligible applicants would have received if their claims did not necessitate audits in the first place. For example, if the cost to audit a questioned claim of \$100,000 is \$5,000, then the applicant would receive \$95,000 in reimbursement once the Department determined that the payment was appropriate.

Section 331.19 Who will approve reimbursement once an application has been received and a claim has been verified and/or audited?

This part proposes to give the Assistant Secretary for Aviation and International Affairs authority to determine eligibility and authorize reimbursement under the Act. Expertise on aviation policy resides with the Assistant Secretary for Aviation and International Affairs. This official has administered similar programs and is supported by a professional staff of aviation analysts and economists who are knowledgeable on such matters.

Subpart B—Application Procedures

Section 331.21 What information must operators or providers submit in their applications for reimbursement?

In order to calculate and support a reimbursement claim, the Department proposes that an applicant complete the form which is found in Appendix A and submit the information it requires, including eligibility information and a summary calculation of the financial data supporting an applicant's claim for reimbursement, as shown in the following table (which is incorporated into Appendix A):

FINANCIAL DATA

	Column A	Column B	Column C
	Pre 9–11–01 Forecast or after-the-fact estimate for the eligible period*	Actual results for the eligible period*	Column A minus Column B
Line 1—Total Operating Revenues.			
Line 2—Total Operating Expenses.			
Line 3—Total Operating Income or (Loss).			
Line 4—Non-operating Revenue.			
Line 5—Non-operating Expenses.			
Line 6—Non-operating income(loss).			
Total—Line 3 plus line 6.			

The Department proposes in the Background and Eligibility Form to require the submission of an applicant's profit and loss statements, or such financial records generated as a routine matter for the use of management, for the years 1999 through 2005. Similarly, the Department proposes to require the submission of actual forecasts that applicants prepared for both these baseline periods and for any part of the reimbursement periods. The Department further proposes that, where appropriate, after-the-fact forecasts should be allowed. After-the-fact forecasts are discussed in more detail under subsection (f) of this section.

All financial records submitted in support on an application would be subject to the same certification requirement as the other information that is submitted through the Background and Eligibility Form. These data would enable the Department to establish baseline business trends and forecast experience for applicants prior to the September 11, 2001 terrorist attacks, which would be used as benchmarks to test the reasonableness of the applicants' reimbursement claims.

The Department would use the applicant's actual and forecast results for the appropriate reimbursement period, together with such sources as macroeconomic data, individualized applicant business trend information, and the applicant's explanations, to make its determinations on the payment of claims.

In calculating their revenues and expenses, the Department proposes that applicants utilize already existing financial data, supplemented as necessary by footnotes or explanations pertinent to the reimbursement application. Financial schedules, such as income statements, statements of operations, forecasts of operating results, budget documents or other similar information, may be used as the reference sources for completing the table in Appendix A. The Department suggests that these documents be a starting point under the assumption that most businesses maintain financial statements as a routine part of doing business, or for other reasons such as income tax preparation, loan applications, or contract negotiations. The Department believes that use of

these documents, rather than requiring the completion of that detailed new forms, would facilitate the reimbursement process, especially for the smaller companies typically engaged in fewer activities.

As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, the Department proposes in subsection (b) that data from already existing financial statements would be adjusted, on a pro-rata basis, to comply with the eligibility periods.

The Department anticipates that some applicants may have prepared multiple forecasts for the same time period of time. Therefore, the Department proposes in subsection (c) that, if multiple forecasts were prepared, applicants utilize the one most recently approved, prior to September 11, 2001, so long as it was otherwise objective and reliable.

In subsection (d), the Department proposes that information provided by applicants for use in the October 2005 DOT study should not be merely recited for purposes of the application. While

the October 2005 DOT study noted that the losses it reported were likely to “reasonably approximate” the general aviation leaseholder’s total losses (at least through January 23, 2004), it also advised that the financial data establishing the basis for a payment should “be subject to a more rigorous verification regime.” The Department proposes that applicants not simply rely on the estimates as then reported; if they do, the Department would have the right to reject their claim or forward it for full verification follow-up, including audit. Applicants who reiterate the losses reported in the October 2005 DOT study should make fully transparent the bases for those estimates, and provide a basis for testing the reasonableness of the estimates by supplying supporting data.

In subsection (e) the Department proposes that failure to complete the required information constitutes grounds for a rejection. This subsection would adhere to Congress’s desire that the appropriated funds be expended prudently. The proposed language in subsection (e) leaves the Department discretion in determining whether or not the missing information warrants a rejection. Subsection (e) also seeks to clarify that the burden to substantiate claims should rest with applicants and not the Department.

Subsection (f) proposes to allow the use of “after-the-fact” forecasts. If pre-September 11, 2001 forecasts were not prepared at all, or prepared for less than the full reimbursement period, the rule would require applicants to make a good faith effort to quantify their expected operating results for the part of the reimbursement period not covered by its actual forecasts. The Department expects that not all of the fixed-based general aviation operators and providers of general aviation ground support services routinely forecasted projected revenues and expenses, (and, for those that did, they may have done so only in a rough or summary “year-end” fashion that would not permit ready calculations of losses due to September 11-related events). Further, the losses eligible for reimbursement here can extend over several years, for which reliable forecasts may not be available, and even when firms utilize advanced forecasting methods, there is necessarily a range of reasonableness in any such exercise that makes precise determinations of loss impossible. However, the Department believes that Congress readily understood that precise calculations of losses cannot be practically obtained, and that good-faith, carefully considered estimates would need to be used in determining losses, with those estimates subject to

independent verification and audit to prevent overreaching and fraud.

In subsection (g), the Department proposes that the Background and Eligibility Form, along with supporting financial documents, be certified as having been prepared under the supervision of the applicant’s President, Chief Executive Officer, or Chief Operating Officer, and as being true and accurate to the best of his or her knowledge. Subsection (g) further proposes that applicants acknowledge in their certifications that the submission of false or deceptive data is punishable under law by fine and/or imprisonment.

To assist the Department with verification of claims, and to facilitate any necessary audits, the Department proposes in subsection (h) that applicants retain all materials that they relied upon to establish their claim for reimbursable losses.

The Department proposes under subsection (i) to seek information on other specific types of expenses, including mitigating expenses, lobbying expenses, and special expenses.

In subsection (j), the Department proposes that if an applicant believes the release by the Department to the public of information provided by the applicant would cause substantial harm to the applicant’s competitive position, the applicant may request that the Department hold such submissions confidential. In preference to “blanket” requests, confidentiality requests should be specific to particular data submitted, as it is very unlikely that all submitted data could cause competitive harm if released to the public.

Section 331.23 In what format must applications be submitted?

The Department proposes in subsection (a) that the Background and Eligibility Form found at Appendix A be submitted in hardcopy format and, if possible, electronic format. The Department also proposes to make the Background and Eligibility Form available in electronic format.

In order to facilitate the review and manipulation of financial data for verification purposes within the Department, subsection (b) proposes that supporting financial records be submitted in electronic format.

Under subsection (c), the Department proposes that faxes and e-mails not be accepted because of the difficulties they create in handling large volumes of documents.

Section 331.25 To what address must operators or providers send their applications?

In order to expedite the timely receipt and review of applications, the Department is proposing in subsection (b) that applications be submitted via an express package service (e.g., Federal Express, DHL, UPS). Alternatively, applicants may wish to hand deliver applications to the Department. The Department would make arrangements to receive such packages in a method that would be consistent with current Departmental office security procedures.

The Department proposes that the address stated in the rule be mandatory. Accordingly, the Department proposes in subsection (c) to not accept applications sent elsewhere.

Section 331.27 When are applications due under this part?

Reimbursement is expected to provide potential applicants, particularly small entities, with significant relief. The Department expects that most, if not all, potential applicants are aware of the reimbursement available under this rule, and that they are in a position to quickly comply with its requirements in order to expedite their reimbursement payments. The Department would take steps to post all relevant information on its Web site and coordinate with the management at the five airports to ensure that all potential applicants are promptly advised of the issuance of the final rule. For the foregoing reasons, the Department proposes to expedite the time requirement for submitting applications. We believe that a period of 30 calendar days from the date of publication of the final rule provides sufficient time to complete and submit an application. The Department welcomes comment from potential applicants on the sufficiency of this proposed period.

Subpart C—Set-Aside for Operators or Providers at Certain Airports

Section 331.31 What funds are available to applicants under this subpart?

The 2006 Appropriation Act provides that, from the full \$17 million appropriated, an amount not to exceed \$5 million shall be available on a pro-rata basis, if necessary, to fixed-based general aviation operators and providers of general aviation ground support services at the three Maryland airports—College Park, Potomac Airfield, and Washington Executive/Hyde Field. The Department tentatively construes this language as necessitating a separate

totaling of the eligible losses incurred at these three airports.

Section 331.33 Which operators and providers are eligible for the set-aside under this subpart?

The Department reads the plain language of the Act to restrict eligibility under this subpart to fixed-based general aviation operators and providers of general aviation ground support services at the three Maryland airports—College Park, Potomac Airfield, and Washington Executive/Hyde Field.

Section 331.35 What is the basis upon which operators and providers will be reimbursed through the set-aside under this subpart?

For the \$5 million set-aside for the three Maryland airports, the Department proposes to apply the same procedures set forth in subpart B of this part. The Department reads section 185 of the Act to require an additional procedure if total eligible losses at the three Maryland airports exceed \$5 million. In the event that eligible losses at the three Maryland airports total more than \$5 million, the Department proposes that a proportionate amount should be paid to each eligible entity. For the reasons set forth in Section 331.17, the Department proposes to deduct from an applicant's reimbursement amount the cost of any independent audit associated with a questioned claim, before distributing funds to the applicant.

Regulatory Analyses and Notices

This NPRM is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The NPRM proposes procedures to provide reimbursement to eligible applicants from funds appropriated by Congress. The Department administers a number of programs entailing similar procedures. This NPRM therefore does not represent a significant departure from existing regulations and policy. Furthermore, once implemented, this rule would have only minimal cost impacts on regulated parties.

Federalism

This rule does not directly affect States, the relationship between the national government and the States, or the distribution of power among the national government and the States, such that consultation with States and local governments is required under Executive Order 13132.

Regulatory Flexibility Act

The Department certifies that this rule would not have significant economic

effects on a substantial number of small entities. In the aggregate, the cost among all applicants for gathering information and submitting an application should range from \$2,501 to \$5,003.

Paperwork Reduction Act

This rule contains information collection requirements subject to the Paperwork Reduction Act of 1995, specifically the application documents that fixed-based general aviation operators and providers of general aviation ground support services must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Form) for Reimbursement of General Aviation Operators and Service Providers in Washington, DC Area.

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation would use the data submitted by the fixed-based general aviation operators and providers of general aviation ground support services to determine their reimbursement for direct and incremental financial losses incurred while the airports were closed due to Federal Government actions taken after the terrorist attacks on September 11, 2001.

Frequency: For this final rule, the Department would collect the information once from fixed-based general aviation operators and providers of general aviation ground support services.

Respondents: The respondents include an estimated 24 fixed-based general aviation operators and providers of general aviation ground support service. This estimate is based on the number of fixed-based general aviation operators and providers of general aviation ground support services identified in the October 2005 DOT study.

Burden Estimate: Total applicant burden of between \$2,501 and \$5,003 based on a burden of between three (3) and six (6) hours per applicant and a weighted average cost per hour of \$34.74.

Form(s): The data would be collected on the Form entitled, "Background and Eligibility Information for Applicants

Filing for Reimbursement Under Section 185 of Public Law 109-115," and included at Appendix A to this part.

Average Burden Hours per Respondent: A weighted average of four (4) hours per application.

The Department has requested approval from the Office of Management and Budget for this information collection.

Other Statutes and Executive Orders

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department must consider in all rulemakings, but which the Department has determined are not sufficiently implicated by this NPRM to require further action. Specifically, this NPRM does not impact the human environment under the National Environmental Policy Act, does not concern constitutionally protected property rights such that Executive Order 12630 is implicated, does not involve policies with tribal implications such the Executive Order 13175 is invoked, does not concern civil justice reform under Executive Order 12988, does not involve the protection of children from environmental risks under Executive Order 13045, and will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Comment Period

This rule concerns a small group of potential applicants and others who might be interested, and the Department believes that most, if not all, are aware of the provisions of the statute. The Department therefore concludes that 30 days is sufficient time for the receipt of comments from the public.

List of Subjects in 14 CFR Part 331

Air transportation, Airports, Airspace, Claims, Grant programs, Reporting and recordkeeping requirements.

Issued this 19th day of September, 2006, at Washington, DC.

Maria Cino,

Acting Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to add 14 CFR part 331 to read as follows:

PART 331—PROCEDURES FOR REIMBURSEMENT OF GENERAL AVIATION OPERATORS AND SERVICE PROVIDERS IN THE WASHINGTON, DC AREA

Subpart A—General Provisions

331.1 What is the purpose of this part?

331.3 What do the terms used in this part mean?

- 331.5 Who may apply for reimbursement under this part?
- 331.7 What losses will be reimbursed?
- 331.9 What funds will the Department distribute under this part?
- 331.11 What are the limits on reimbursement to operators or providers?
- 331.13 What is the eligible reimbursement period under this part?
- 331.15 How will other grants, subsidies, or incentives be treated by the Department?
- 331.17 How will the Department verify and audit claims under this part?
- 331.19 Who will approve reimbursement once an application has been received and a claim has been verified and/or audited?

Subpart B—Application Procedures

- 331.21 What information must operators or providers submit in their applications for reimbursement?
- 331.23 In what format must applications be submitted?
- 331.25 To what address must operators or providers send their applications?
- 331.27 When are applications due under this part?

Subpart C—Set-Aside for Operators and Providers at Certain Airports

- 331.31 What funds are available to applicants under this subpart?
- 331.33 Which operators and providers are eligible for the set-aside under this subpart?
- 331.35 What is the basis upon which operators and providers will be reimbursed through the set-aside under this subpart?

Appendix A to Part 331—Background and Eligibility Information for Applicants Filing for Reimbursement under Section 185 of Public Law 109-115

Subpart A—General Provisions

§ 331.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 185 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006 (“the Act” or “the 2006 Appropriation Act”), Public Law 109-115, 119 Stat. 2396. Section 185 is intended to reimburse certain fixed-based general aviation operators or providers of general aviation ground support services at five airports in the Washington, DC metropolitan area for direct and incremental losses due to the actions of the Federal Government to close airports to general aviation operations following the terrorist attacks of September 11, 2001.

§ 331.3 What do the terms used in this part mean?

The following terms apply to this part:

Airport means Ronald Reagan Washington National Airport; College

Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; Washington Executive/Hyde Field in Clinton, Maryland; or Washington South Capitol Street Heliport in Washington, DC.

Closed or closure means the period of time until the first general aviation operations were generally permitted at Ronald Reagan Washington National Airport; until November 30, 2005 at Washington South Capitol Street Heliport; or the earliest that transient traffic was generally permitted to return to the three Maryland airports.

Department means the U.S. Department of Transportation and all its components, including the Office of the Secretary (OST) and the Federal Aviation Administration (FAA).

Direct and incremental losses means losses incurred by a fixed-based general aviation operator or a provider of general aviation ground support services as a result of the Federal Government’s closure of an airport following the terrorist attacks against the United States on September 11, 2001. These losses do not include any losses that would have been incurred had the terrorist attacks on the United States of September 11, 2001 not occurred.

Fixed-based general aviation operator means an entity based at a particular airport that provides services to and support for general aviation activities, including the provision of fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts supplier).

Forecast or forecast data means a projection of revenue and expenses during the eligible reimbursement period had the attacks of September 11, 2001 not occurred.

Incurred means to become liable or subject to (as in “to incur a debt”).

Loss means something that is gone and cannot be recovered.

Provider of general aviation ground support services means an entity that does not qualify as a fixed-based general aviation operator but operates at a particular airport and supplies services, either exclusively or predominantly, to support general aviation activities, including flight schools or security services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts or equipment supplier).

You means fixed-based general aviation operators or providers of

general aviation ground support services.

§ 331.5 Who may apply for reimbursement under this part?

If you are an eligible fixed-based general aviation operator or provider of general aviation ground support services (collectively “operators or providers”) at an eligible airport or airports in the Washington, DC area, you may apply for reimbursement for direct and incremental losses under this part. If you are applying for reimbursement based on losses at more than one airport, then you must submit separate applications for each airport. For example, if you are a provider of general aviation ground support services at Ronald Reagan Washington National Airport and Potomac Airfield in Fort Washington, Maryland, you must submit two separate applications.

§ 331.7 What losses will be reimbursed?

(a) You may be reimbursed for the difference between the net income you actually or reasonably forecast for the eligible reimbursement period and the actual net income you earned during the eligible reimbursement period. If you did not forecast net income for the eligible reimbursement period or any part of the eligible reimbursement period, you may be reimbursed for the difference between what you can show you would have reasonably expected to earn as net income during that period had the airport at which you are or were an operator or provider not closed, and the actual net income you earned during the eligible reimbursement period.

(b) If you make a claim for extraordinary, non-recurring, or unusual adjustments, you must demonstrate that such adjustments were fully attributable to the Federal Government’s closure of the five Washington-area airports, are in conformity with Generally Accepted Accounting Principles, were fully borne within the statutory reimbursement period, that the loss was not discretionary in nature, and that reimbursement would not be duplicative of other relief.

(c) A temporary loss that you recovered after the attacks of September 11, 2001, or that you expect to recover, is not eligible for reimbursement under this part. You will not be reimbursed for those losses incurred through your own fault, negligence, or violation of law, or because of the actions of a third party (e.g. an airport).

(d) If you engaged in any non-aviation income-producing activities after September 11, 2001, such income must be reported under question number 5 on the Background and Eligibility Form.

(e) So called “cost savings” claims (*i.e.* increasing the claimed amount of reimbursement by reducing actual expenses to “adjust” for savings in expense categories asserted not to have been affected by the terrorist attacks) are not eligible for reimbursement.

(f) You cannot claim reimbursement for the lost time value of money (*i.e.* interest on lost profits for the period of time the funds were not available for your use).

(g) Lobbying fees and attorneys’ fees are not eligible for reimbursement.

(h) Your calculation of revenues, expenses and income must be based on financial documents maintained in the ordinary course of business that were prepared for the eligible reimbursement period, such as income statements, statements of operations, profit-and-loss statements, operating forecasts, budget documents or other similar documents.

§ 331.9 What funds will the Department distribute under this part?

The Department will distribute the full amount of reimbursement it determines is payable to you under section 185 of the Act.

§ 331.11 What are the limits on reimbursement to operators or providers?

(a) You are eligible to receive reimbursement subject to the subpart C set-aside for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The amount available to you as reimbursement may be reduced to cover the cost of independent verification and auditing, as set forth in Section 331.17.

(b) If you receive more reimbursement than the amount to which you are entitled under section 185 of the Act or the subpart C set-aside, the Department will notify you of the basis for the determination and the amount that you must repay to the Department. The Department will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) to the extent required by law, in recovering such overpayments.

(c) Payment will not be made to you until you have agreed to release the United States Government for all claims for financial losses resulting from the closure of the five airports in the Washington, DC area. The Department will provide a release form to applicants that must be completed before any payment is made under Section 185.

§ 331.13 What is the eligible reimbursement period under this part?

The eligible reimbursement period for direct and incremental losses differs by airport:

(a) For Ronald Reagan Washington National Airport the eligibility period for reimbursement is from September 11, 2001 until October 18, 2005.

(b) For College Park Airport in College Park, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(c) For Potomac Airfield in Fort Washington, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(d) For the Washington South Capitol Street Heliport in Washington, DC, the eligibility period for reimbursement is from September 11, 2001 to November 30, 2005.

(e) For Washington Executive/Hyde Field in Clinton, Maryland, there are two eligibility periods for reimbursement. The first period is from September 11, 2001 until May 16, 2002. The second period is from September 29, 2002 until February 13, 2005.

§ 331.15 How will other grants, subsidies, or incentives be treated by the Department?

Grants, subsidies, or incentives that you have received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities, will be considered revenues and should be reported as such on your application.

§ 331.17 How will the Department verify and audit claims under this part?

Departmental staff will initially review each claim in detail, and contact you should questions arise. If they are unable to satisfactorily resolve the matter following consultation with you, your claim will be forwarded to the Office of the Inspector General, or another independent auditor, for verification and, if necessary, an audit. In addition, the Department may consult with, or make referrals to, other government agencies, including the Department of Justice.

§ 331.19 Who will approve reimbursement once an application has been received and a claim has been verified and/or audited?

The Assistant Secretary of Aviation and International Affairs will make a final determination of your eligibility and authorize reimbursement to you.

Subpart B—Application Procedures

§ 331.21 What information must operators or providers submit in their applications for reimbursement?

(a) You must submit the form entitled *Background and Eligibility Information for Applicants Filing for Compensation Under Section 185 of Public Law 109-115* (“Background and Eligibility Form”), which is found in Appendix A to this part, along with the profit and loss statements, forecasts, or other financial documents (collectively “supporting financial documents”) generated as a routine matter for the purposes of managing your business, and relied upon in completing your application.

(b) To the extent that your calculation of revenues, expenses and incomes are based on monthly records, you must adjust your calculation, on a pro-rata basis, to conform to the eligibility period. For example, if you utilize a monthly financial record to prepare a calculation of your September 2001 revenues, you should apportion your results for the period between September 11 and September 30, 2001.

(c) If multiple forecasts were prepared for the same period, you must utilize the one most recently approved, prior to September 11, 2001, so long as it is otherwise objective and reliable.

(d) If you provided information to the Department as part of its study entitled *Estimated Financial Losses to Selected General Aviation Entities in the Washington, DC Area (Oct. 2005)* (“2005 General Aviation Study”), you should not simply reiterate the same data provided to the Department at that time; you must provide the most current information that is available to you. If you do reiterate that same data provided to the Department for the 2005 General Aviation Study, the basis for your estimates must be verifiable from the supporting financial documents that you submit with your application.

(e) Failure to include all required information will delay consideration of your application by the Department and may result in a rejection. You have the burden to document and substantiate your claim; the Department will provide reimbursement only if it is satisfied that payment is fully supported.

(f) If, prior to September 11, 2001, you did not prepare a forecast covering the entire eligible reimbursement period, or if the forecast you completed is not relevant to the information required by this part, you may submit an “after-the-fact” estimate of the amount that you would have reasonably expected to accrue as net income had the airport at which you are or were an operator or

provider not closed. "After-the-fact" estimates must consider items particular to your business, including labor agreements and the terms of contracts in place at the time of the eligible reimbursement period, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, and other similar documents. You must explain the methodology that you used when preparing your reconstructed forecast.

(g) You must certify that the information on the Background and Eligibility Form and all of the supporting financial documents that you are submitting is true and accurate under penalty of law and that you acknowledge that falsification of information may result in prosecution and the imposition of a fine and/or imprisonment.

(h) You must retain all materials you relied upon to establish your claim for losses.

(i) You must provide mitigating expenses, lobbying expenses, and special expenses, as well as extraordinary adjustments, as instructed on the Background and Eligibility Form.

(j) If you believe that the release of financial information provided to the Department in support of your application would cause you substantial harm if released by the Department to the public upon an appropriately made request, you may request that the Department hold portions of your application as confidential. Your request must specify the portions of your application that should be held by the Department as confidential, and you

must provide an explanation as to how the release of such information would cause you substantial harm.

§ 331.23 In what format must applications be submitted?

(a) Appendix A of this part must be submitted in hardcopy format and, if possible, in electronic format. The Department has made available an electronic version of this form at the following Web site: <http://ostpxweb.dot.gov/aviation/index.html>. (Click on "Programs.")

(b) All supporting financial documents must be submitted in electronic format utilizing a 3.5" inch floppy disk, compact disk, or flash memory stick.

(c) Faxed and e-mailed applications are not acceptable and will not be considered.

§ 331.25 To what address must operators or providers send their applications?

(a) You must submit your application and all required supporting information, to the following address: U.S. Department of Transportation, Aviation Relief Desk (X-50), 400 7th Street, SW., Washington, DC 20590.

(b) Your application must be submitted via courier or an express package service, such as Federal Express, UPS, or DHL.

(c) If complete applications are not submitted to the address in paragraph (a) of this section, they will not be accepted by the Department.

§ 331.27 When are applications due under this part?

You must submit your application within 30 calendar days from the effective date of the final rule.

Subpart C—Set-Aside for Operators and Providers at Certain Airports

§ 331.31 What funds are available to applicants under this subpart?

The Department is setting aside a sum of \$5 million to reimburse eligible operators or providers, as set forth in section 185 of the Act.

§ 331.33 Which operators and providers are eligible for the set-aside under this subpart?

Operators or providers at the following three airports during the eligible reimbursement periods are eligible for the set-aside:

(a) College Park Airport in College Park, Maryland;

(b) Potomac Airfield in Fort Washington, Maryland; and

(c) Washington Executive/Hyde Field in Clinton, Maryland.

§ 331.35 What is the basis upon which operators or providers will be reimbursed through the set-aside under this subpart?

Operators or providers eligible under this subpart will be reimbursed pursuant to the same procedures set forth in subpart B of this part. If total losses for all eligible claims at the three airports set forth in § 331.31 of this part are less than \$5 million, then such claims will be paid in full. If the total losses for all eligible claims at the three airports set forth in § 331.31 of this part exceed \$5 million, then the total losses will be divided on a pro rata basis, and a proportionate amount for each claim will be distributed to applicants.

BILLING CODE 4910-9X-P

**Appendix A to Part 331 – Background and Eligibility Information for Applicants
Filing for Reimbursement Under Section 185 of Public Law 109-115**

APPENDIX A

**Background and Eligibility Information
For Applicants Filing for Reimbursement Under
Section 185 of Public Law 109-115**

1. Applicant name: _____

2. Applicant address:

3. At which of the following airports did the applicant operate as a fixed-based operator or provider of general aviation ground support services on September 11, 2001?
 - Ronald Reagan Washington National Airport

- College Park Airport in College Park, Maryland
- Potomac Airfield in Fort Washington, Maryland
- Washington Executive/Hyde Field in Clinton, Maryland
- Washington South Capitol St. Heliport, Washington, D.C.

4. Briefly describe the nature of the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

5. Did the applicant or any part of it conduct non-fixed-based general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Yes. Briefly describe the non-fixed-based general aviation activities and non-aviation ground support services.

No.

9. **Baseline Financial Data and Forecasts.** Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

10. By regulation, the requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) with a company forecast/budget of operating results that existed prior to September 11, 2001 if such a forecast/budget was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

11. Reimbursement Claim

Financial Data		Column A	Column B	Column C
		Pre 9-11-01 Forecast or After- the Fact Estimate for the Eligible Period*	Actual Results for the Eligible Period*	Column A Minus Column B
Line 1	Total Operating Revenues			
Line 2	Total Operating Expenses			
Line 3	Total Operating Income or (Loss)			
Line 4	Non-operating Revenue			

Line 5	Non-operating Expenses			
Line 6	Non-operating income(loss)			
Total	Line 3 plus line 6			

* The table above applies to the period 9-11-01 through 2-13-05 for the three Maryland airports, including Washington Executive/Hyde Field. However, for Hyde Field please prepare separate claims for the periods before, during, and after the ineligible period, 5-17-02 through 9-28-02. For Ronald Reagan Washington National Airport, the eligible period is from 9-11-02 through 10-18-05 and for Washington South Capitol Street Heliport, the period is from 9-11-01 through 11-30-05.

Lobbying expenses are to be excluded from both Columns A and B.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation Transportation Security Act (ATSA) Public Law 107-71 November 19, 2001, Airport Improvement Program (AIP)).

Yes. Enter amount = \$_____

14. Certification

I certify the above information and all attached documents as true and accurate under penalty of law, and acknowledge that falsification of information may result in prosecution and imposition of a fine and/or imprisonment.

Signature of Company Official

Printed Name of Company Official

Position (CEO, COO, or CFO) of Company Official

Phone Number of Company Official: (voice) _____

(fax) _____

Date _____

Name of Contact Person (if different from above)

Position of Contact Person (if different from above)

Phone Number of Contract Person: (voice) _____

(fax) _____

Email Address of Contact Person: _____

**Instructions for Completing
Background and Eligibility Information
for Applicants Filing for
Reimbursement Under Section 185 of
Public Law 109-115**

1. Applicant name

This is the person or legal entity who undertakes to act as a fixed-based general aviation operator or who provides general aviation ground support services, directly or by a lease or any other arrangement.

2. Applicant address

The applicant address is that location within the local tax authority jurisdiction that is held out to the public as the business or airport address.

3. Airport of operation on September 11, 2001

This question asks the applicant to identify those airports in the Washington, DC area where it provided either fixed-based general aviation services or general aviation ground support services on September 11, 2001. Check as many airports as you served on September 11, 2001.

4. Briefly describe the nature of the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services at each airport during the eligible period for reimbursement.

You should describe the specific fixed-based general aviation services or general aviation ground support services that you provided at each of the airports.

5. Did the applicant or any part of it conduct non-fixed-based general aviation activities or provide non-aviation ground support services during the 2001 through 2005 period?

Check "Yes" if you conducted any non-fixed-based general aviation activities or provided non-aviation ground support services during the 2001 through 2005 period. Describe the activities that you undertook during this period that did not directly support general aviation at the airport.

6. Briefly describe how the events of September 11, 2001 affected the applicant's operations as a fixed-based general aviation operator or a provider of general aviation ground support services.

You should describe how the level and conduct of your operations as a fixed-based general aviation operator or your operations as a provider of general aviation ground support services were changed as a result of September 11, 2001 and the ensuing security restrictions that were imposed by the Federal Government.

7. Did the applicant undertake any actions to lessen or offset the impact of the Federal Government's closure of airports in the Washington, DC area following the attacks of September 11, 2001?

Check "Yes" if you attempted to minimize the impact that the terrorist attacks of September 11, 2001, had on your business. Briefly describe your actions and the effect that they had on you. Include any activities or services undertaken after September 11, 2001 that did not provide support for general aviation but that did provide revenues to sustain your business.

8. Has the applicant filed income taxes for any period between 1999 and 2005?

Check "Yes" if you filed income taxes during this period, and indicate the filing status under which you filed your income tax returns.

9. Baseline Financial Data and Forecasts. Attach to this Appendix copies of your profit and loss statements, or such financial records as you generated as a routine matter for the use of management, for the periods 1999 through 2005, that show your actual financial results. Similarly, attach copies of any actual forecasts that you prepared for both these baseline periods and for any part of the reimbursement periods that were prepared prior to September 11, 2001.

This question directs applicants to provide the Department with certain financial documents in order to verify and substantiate their claims. Documents that you have already prepared should be sufficient. When necessary, you should supplement these documents with footnotes or explanations that are pertinent to your reimbursement claim. The financial data may include such documents as income statements, statements of operations, forecasts of operating results, income projections, pro forma budget projections, budget documents, tax preparation support material, information presented in investment perspectives and registrations, or other similar information that in whole or in part cover the period from 1999 through 2005.

10. By regulation, the requested amount of reimbursement claimed below must be based on a comparison of actual operating results (revenues, expenses and profits or losses) with a company forecast of operating results that existed prior to September 11, 2001 if such a forecast was actually prepared. If the applicant did not prepare any such pre-September 11 forecasts, or prepared them for less than the full reimbursement period, an after-the-fact estimate of what the applicant can document it reasonably expected to earn during the remaining eligible period may be submitted. If such an after-the-fact estimate is used, describe below the period for which it applies and the methodology that was used to determine it.

Indicate here whether an "after-the-fact" forecast was prepared, and briefly describe the methodology used in preparing the forecast. Your methodology must take into account items relevant to your businesses, such as the terms of existing contracts, short-term or long-term budget documents, documents submitted in support of applications for loans or lines-of-credit, existing labor agreements and leasing agreements, and other similar types of documents.

In preparing your "after-the-fact" forecast, you may wish to consult a July 2001 report prepared for the FAA, entitled *Forecasting Aviation Activity by Airport*. This report was prepared by GRA, Incorporated (GRA), for the FAA's Office of Aviation Policy Plans Statistical and Forecast Branch (APO-110). While the Department recognizes that fixed based general aviation operators and providers of general aviation ground support

services are different entities from airports, the Department believes that this document offers relevant guidance to applicants who do not prepare forecasts as part of regular business operations. This July 2001 report may be accessed at:

http://www.faa.gov/data_statistics/aviation_data_statistics/forecasting/media/AF1.doc.

The July 2001 report explains the basic steps usually utilized in preparing forecasts, including: Identifying parameters and measures to forecast; collecting forecast information of expected revenues or expenses, including budgets; gathering and evaluating data; selecting a forecast method (such as regression and trend analysis, share analysis, or exponential smoothing); applying methods and evaluating results; and summarizing and documenting the results.

Additionally, data sources to assist you in making adjustments to your forecast are available from the Department's Web site at <http://ostpxweb.dot.gov/aviation/index.html> (Click on "Programs"). The Department notes that, while it can answer questions for applicants that might arise while applicants develop forecasts, the Department is not in a position to propose or develop projections for applicants.

11. Reimbursement Claim

For purposes of completing the information in the reimbursement claim table, total operating revenues (line 1) include the inflow of funds to the applicant resulting from the sale of goods and services related to the activities of a fixed-based operator or a provider of general aviation services. Examples include, but are not limited to monetary amounts or value received for providing: Aircraft fuel or oil; delivery of aircraft fuel or oil; transient and long-term storing, tie down parking and sheltering of aircraft; maintenance, inspection, checking, upgrading of aircraft and aircraft related equipment and for polishing and cleaning property and equipment; for providing flight instruction services and materials; and miscellaneous items for purchase such as maps, books, flight clothing, sectional charts, devices and parts for aircraft, food services, hospitality services, auto rentals, aircraft custodial and sanitation services.

Total operating expenses (line 2) include the cost to the applicant of providing the goods and services related to the activities of a fixed-based operator or a provider of general aviation services. Examples include, but are not limited to: Labor costs for all categories of employees (including compensation, vacation and sick leave pay, medical benefits, workmen's compensation contributions, accruals or annuity payments to pension funds, training reimbursements, professional fees, licensing fees, educational or recreational activities for the benefit of the employee, stock incentives, etc.); the cost of fuel and oil including nonrefundable aircraft fuel and oil taxes; insurance; flight and ground equipment parts; general services purchased for flight or ground equipment maintenance; depreciation of flight and ground equipment; amortization of capitalized leases for flight and ground

equipment; provisions for obsolescence and deterioration of spare parts; and rental expenses of flight and ground equipment. Advertising, promotion and publicity expenses, landing fees, clearance, customs and duties, utilities, bookkeeping, accounting, recordkeeping and legal services are also part of the total operating expenses.

For reasons set forth elsewhere in section 331.7 of this Part, you may not include lobbying expenses.

Total operating income or loss is calculated by subtracting the total operating expenses from the total operating revenues. If the total operating revenues exceed the total operating expenses, the calculation results in a total operating income. If the total operating expenses exceed the total operating revenues, the calculation results in a total operating loss.

Non-operating revenue and expenses include: Income and loss incident to commercial ventures not inherently related to the direct provision of fixed-based operator services or general aviation ground support services; other revenues and expenses attributable to financing or other activities that are extraneous to and not an integral part of general aviation services; and special recurrent items of a nonperiod nature.

Examples of non-operating income include, but are not limited to: interest income; foreign exchange gains; equity income of an investor controlled company; intercompany transactions; dividend income; net unrealized gains on marketable equity securities; and capital gains.

Examples of non-operating expenses include, but are not limited to: interest on long-term debt and capital leases; interest on short-term debt; imputed interest capitalized; amortization of discount and expense on debt; foreign exchange losses; fines or penalties imposed by governmental authorities; costs related to property held for future use; donations to charities, social and community welfare purposes; losses on reacquired and retired or resold debt securities; and losses on uncollectible non-operating receivables.

Non-operating income is the result of subtracting the non-operating expenses from the non-operating revenues.

Total income in the sum of the total operating income or (loss)(line 3) plus line 6 non-operating income.

The difference between column A and B is the basis for column C. This constitutes the total amount of your claim for reimbursement.

As the eligibility periods, for the most part, begin and end on days other than the first or last days of the month, quarter or year, data from already existing financial statements must be adjusted, on a pro-rata basis, to reflect the eligibility periods. For example, the period of eligibility for all applicants begins on September 11, 2001 and therefore, the only time period during the month of September that is eligible for reimbursement is September 11 through September 30, a period of 20 days. Applicants should be prepared to show both how they apportioned such financial data into the reimbursement periods, and why they chose the apportionment approach used. Applicants

can then use these estimates for the specified periods at the beginning and end of the eligible period to add to the financial amounts for 2002, 2003, and 2004 to calculate the total amounts sought in Appendix A.

12. Has the applicant or any of its subsidiaries or affiliates received grants, subsidies, incentives or similar payments from local, state, or Federal governmental entities in support of the security, maintenance and provision of general aviation services and facilities furnished in response to the events of September 11, 2001? (This includes payments under the Aviation and Transportation Security Act of 2001 (Public Law 107-38) and the Airport Improvement Program under the Airport and Airway Improvement Act of 1982 (Public Law 97-248).)

This question requires that you disclose all grants, subsidies, or incentives that you received during the eligible reimbursement period, either directly or indirectly, from Federal, State, and local entities, to reimburse you for the cost of operations and capital improvements associated with implementing security programs, or maintaining or providing general aviation services and facilities.

13. Has the applicant or any of its subsidiaries or affiliates incurred lobbying expenses, mitigating expenses, or special expenses (as described in the section captioned "What information must operators or providers submit in their applications for reimbursement?"), or extraordinary adjustments.

Check "Yes" if you incurred any such expenses or experienced any such adjustments. You must briefly describe the nature of such expenses and adjustments, including the amounts. Additionally, you must indicate whether or not such expenses or adjustments have been included in or excluded from the totals in the table at item number 11.

Lobbying includes any amount paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Mitigating expenses include the utilization of property, the provision of services and the sale of goods that were undertaken to mitigate losses arising from the Federal Government's closure of airports attendant to the September 11, 2001 attack. These could include expenses incurred for the provision of services and sale of goods moved from restricted airports to unrestricted airports or compensation for non-aviation oriented goods and services provided at restricted airports. Mitigating expenses may also include expenses for aviation-related fixed assets or capital utilized outside of the restricted airport.

Special expenses include, but are not limited to, moving expenses, additional security equipment and facilities, and loss on sale of assets that arose from the direct imposition of restrictions during the period September 11, 2001 through the applicable eligible date. Any item reported as Special Expenses shall not also be expensed in other

expense categories that are reflected in the calculation of the reimbursement claim. Details regarding special expenses should be noted in footnotes.

Extraordinary adjustments are events or transactions that are material to your business and unusual in nature and infrequent in occurrence.

14. Certification

You must certify that all information contained on the Background and Eligibility Form and the documents submitted in support of your application (e.g. profit and loss statements, actual forecasts, after-the-fact forecasts, etc.) are accurate. This certification is made under penalty of law. Falsification may be grounds for monetary and/or criminal sanctions. This certification must be made by a company CEO, COO, or CFO.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

[Docket No. DEA-282P]

RIN 1117-AB03

Authorized Sources of Narcotic Raw Materials

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: DEA proposes to amend its regulations to update the list of non-traditional countries authorized to export narcotic raw materials (NRM) to the United States. This change would replace Yugoslavia with Spain. This proposed rule seeks to maintain a consistent and reliable supply of narcotic raw materials from a limited number of countries consistent with United States obligations under international treaties and resolutions.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before December 4, 2006.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-282P" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/Liaison and Policy Section (ODL). Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal

Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT:

Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Legal Authority

DEA enforces the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*), as amended. DEA regulations implementing this statute are published in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1399. These regulations are designed to establish a framework for the legal distribution of controlled substances to deter their diversion for illegal purposes and to ensure an adequate and uninterrupted supply of these drugs for legitimate medical purposes. The CSA and its implementing regulations are consistent with United States treaty obligations that, among other things, address the production, import, and export of controlled substances.

Controlled Substances

Controlled substances are drugs that have a potential for abuse and addiction; these include substances classified as opiates, stimulants, depressants, hallucinogens, anabolic steroids, and drugs that are immediate precursors of these classes of substances. DEA lists controlled substances in 21 CFR part 1308. The substances are divided into five schedules: Schedule I substances have a high potential for abuse and have no accepted medical use. These substances may only be used for research, chemical analysis, or manufacture of other drugs. Schedule II-V substances have an accepted medical use and also have a