

expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee or of the spouse when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support; or

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance.

Johnston Island, also called Johnston Atoll, is a possession of the United States located 717 nautical miles southwest of Honolulu, Hawaii.

Separate maintenance allowance means an allowance to assist an employee assigned to Johnston Island who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at Johnston Island, or for the convenience of the Government, to meet the additional expense of maintaining family members at a location other than Johnston Island.

4. Section 591.403 is revised to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.

(b) The annual rates for the separate maintenance allowance paid to employees assigned to Johnston Island shall be the same as the annual rates for the separate maintenance allowance established by the Department of State in its *Standardized Regulations (Government Civilians, Foreign Areas)*. The annual rates shall not vary by location of the separate household.

(c) The annual rates of the separate maintenance allowance shall be adjusted on the first day of the first pay period beginning on or after [*insert effective date of final regulations*] and, subsequently, on the first day of the first pay period beginning on or after the effective date established for adjustment of annual rates for the separate maintenance allowance in the *Standardized Regulations (Government Civilians, Foreign Areas)*.

5. Section 591.405 is revised to read as follows:

§ 591.405 Responsibilities of agencies.

Agencies with employees stationed at Johnston Island may require reasonable verification of relationship and dependency.

[FR Doc. 95-25647 Filed 10-16-95; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of Finance and Management

7 CFR Parts 3015, 3016, and 3050

Audit Requirements for OMB Circular A-128

AGENCY: Office of Finance and Management, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule simplifies USDA audit requirements for State, local, and Indian Tribal governments that receive USDA financial assistance or cost-type contracts and defines USDA responsibilities for implementing and monitoring those requirements.

DATES: Comments must be submitted on or before December 18, 1995.

ADDRESSES: Comments may be mailed to Lennetta Elias, Audit Liaison Team, Federal Assistance and Fiscal Policy Division, Office of Finance and Management, Room 3031 South Building, 14th and Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Lennetta Elias on (202) 720-0979.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule was reviewed under Executive Order 12866 and it was determined that it is not a significant regulatory action. This proposed rule will not have an annual effect on the national economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Executive Order 12612

USDA evaluated this proposed rule under Executive Order 12612, pertaining to Federalism. This proposed rule will affect State, local, and Indian Tribal governments receiving financial assistance. This proposed rule will increase their administrative discretion with regard to the conduct of audits. For this reason, USDA has determined that this proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12778

The following information is given in compliance with Executive Order 12778. All State and local laws and regulations that are in conflict with this proposed rule are preempted. No retroactive effect is to be given to this. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Flexibility Act

This proposed rule was reviewed with regard to the requirements of Public Law (Public Law 96-354. The Department of Agriculture (USDA) certifies that this proposed rule will not, under the criteria of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather simplifies and consolidates administrative and procedural requirements.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this proposed rule must be submitted to the Office of Management and Budget (OMB) and will not be effective until OMB approves them. USDA certifies that this proposed rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Background

This proposed rule amends title 7, Code of Federal Regulations (CFR), parts 3015 and 3016. The single audit requirements found in §§ 3015.70 through 3015.76 of subpart I, part 3015, are moved to 7 CFR part 3050, Audits of State, local, and Indian Tribal governments. Sections 3015.70 through 3015.76 of Subpart I are reserved for future use. Section 3015.1 is revised to delete the audit provisions. As identified in OMB Circular A-133

"Audits of Institutions of Higher Education and Other Nonprofit Institutions of Higher Education and Other Nonprofit Institutions," USDA proposes to include in the coverage of this rule Federal cost-type contracts used to buy services or goods for the use of the Federal Government. A reference is added to 7 CFR 3016.26, subpart C, citing USDA's regulations that implement OMB Circular A-128, Audits of State and local governments, dated April 12, 1984.

USDA issued its final rule to implement the Single Audit Act (7 CFR part 3015, subpart I) on January 14, 1986 (51 FR 1485). Since that time, there have been concerns expressed that USDA's rule was unduly complicated and difficult to interpret. Although the requirements set forth in 7 CFR part 3015, subpart I, remain the same, this proposed rule simplifies the language for easier implementation by State, local, and Indian Tribal governments. This proposed rule also moves the audit requirements from 7 CFR part 3015, subpart I to 7 CFR part 3050. Until this proposed rule becomes final, the audit requirements for State, local and Indian Tribal governments set forth in 7 CFR part 3015, Subpart I, shall continue to be observed.

List of Subjects

7 CFR Part 3015

Accounting, Grant programs—Agriculture, Indians, Insurance, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surety bonds.

7 CFR Part 3016

Accounting, Grant programs—Agriculture, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

7 CFR Part 3050

Accounting, Indians, Intergovernmental relations, Grant program—Agriculture.

Issued at Washington, D.C.
Approved: September 21, 1995.

Anthony A. Williams,
Chief Financial Officer.
Dan Glickman,
Secretary of Agriculture.

For the reasons set forth in the preamble, title 7, chapter XXX of the Code of Federal Regulations is proposed to be amended as follows:

PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

1. The authority citation for part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Subpart I, consisting of § 3015.70 through 3015.76 and Appendixes A and B is removed and reserved.

3–4. Section 3015.1, paragraphs (a)(2) and (b), are revised to read as follows:

Subpart A—General

§ 3015.1 Purpose and scope of this part.

(a) * * *

(2) Additionally, this subpart establishes intergovernmental review provisions required by Executive Order 12372 for any programs listed in the Federal Register as covered and policy on competition in awarding discretionary grants and cooperative agreements.

* * * * *

(b) These rules supersede and take precedence over individual USDA agency regulations and directives dealing with the administration of grants and cooperative agreements to the extent such regulations and directives are inconsistent with this part, unless such inconsistency is based on a statutory provision or an exception has been obtained from OMB. (See § 3015.3) Definitions for the terms used are set forth in Appendix A in this part.

* * * * *

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

5. The authority citation for part 3016 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 3016.26 is revised to read as follows:

§ 3016.26 Non-Federal audit.

(a) *Basic rule.* Recipients and subrecipients are responsible for obtaining audits in accordance with USDA's implementing regulations set forth in 7 CFR parts 3050 and 3051.

(b) Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State, local, and Indian Tribal governments are not required to have a single audit performed. State, local and Indian Tribal governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds.

6. A new part 3050 is added to read as follows:

PART 3050—AUDITS OF STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Sec.

3050.1 Purpose.

3050.2 Policy.

3050.3 Scope.

3050.4 Definitions.

3050.5 Basic requirements.

3050.6 Assignment of responsibilities.

Appendix A to Part 3050—OMB Circular A-128, Audits of State and Local Governments

Authority: 5 U.S.C. 301 and 31 U.S.C. 7505.

§ 3050.1 Purpose.

This part establishes audit requirements for State, local, and Indian Tribal governments that receive from USDA direct (recipient) or indirect (subrecipient) financial assistance or cost-type contracts used to buy service or goods for the use of the Federal Government, and assigns USDA agency responsibilities for implementing and monitoring those requirements. Additionally, this part implements the audit requirements and policies contained in OMB Circular A-128, "Audits of State and Local Governments."

§ 3050.2 Policy.

USDA requires audits from those governmental entities that receive financial assistance or cost-type contracts from USDA awarding agencies and that are subject to the requirements of OMB Circular A-128, included herein as appendix A of this part.

§ 3050.3 Scope.

This part applies whenever USDA provides financial assistance or cost-type contracts directly or indirectly to State, local, and Indian Tribal governments. USDA Office of Finance and Management (OFM) must approve any proposed exception to or deviation from this part. Any approved exceptions to this part based on statute, or other approved deviations, will be promulgated through USDA agency-specific program regulations. The required audits will expand on the traditional financial statement audit by requiring additional work on internal control systems, compliance testing, and reporting on the Federally assisted programs.

§ 3050.4 Definitions

Exclusive of the definitions contained in appendix A of this part, the following definitions apply.

Agency means an organizational entity of USDA (e.g., the Forest Service) that reports to the Secretary of Agriculture, is recognized by the USDA

Office of Personnel as an agency, and is included on USDA's list of agencies.

Awarding agency means the USDA agency awarding financial assistance or cost-type contracts to a recipient.

Financial assistance means assistance provided by a USDA awarding agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food stamps and food commodities, interest subsidies, insurance, direct appropriations or cost-type contracts, but does not include direct Federal cash assistance to individuals.

General oversight means where an audit agency has not been assigned cognizance, the Office of Inspector General (OIG) for Federal Agencies with the predominant amount of Federal funding shall provide technical assistance to the State, local, and Indian Tribal governments. Where there is no direct funding, OIG for Federal Agencies having the predominant indirect funding provide the general oversight responsibilities.

Lead agency means either the USDA awarding agency providing the majority of financial assistance or cost-type contracts to State, local, or Indian Tribal governments or a specific USDA awarding agency with a special program interest or other established relationship.

Recipient means a State, local, or Indian Tribal government that receives financial assistance or cost-type contracts directly from USDA.

§ 3050.5 Basic requirements.

(a) USDA requires an audit from State, local Indian Tribal government under the following conditions:

(1) *Mandatory.* State, local Indian Tribal governments that receive \$100,000 or more of total financial assistance or cost-type contracts during a fiscal year shall have an audit in accordance with the requirements of appendix A of this part.

(2) *Optional.* State, local Indian Tribal governments that receive between \$25,000 and \$100,000 of total financial assistance or cost-type contracts during a fiscal year shall have either an audit in accordance with this part or a program-specific audit performed in accordance with the relevant USDA awarding agency laws and regulations governing individual programs. Program-specific audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with any applicable USDA audit guide,

compliance tests contained in the OMB Compliance Supplement for the specific program involved, and any program-specific audit regulations. If the program is not covered by paragraphs (a)(1) through (a)(3) of this section, the auditor shall design appropriate compliance tests to review program operations in accordance with the Government Auditing Standards.

(3) *Exclusion.* State, local Indian Tribal governments that receive less than \$25,000 in total financial assistance or cost-type contracts in a fiscal year are exempt from compliance with Federal audit requirements. However, records must be available for review by appropriate officials of USDA, the General Accounting Office (GAO), or a subgranting entity. These entities shall be governed by the audit requirements prescribed by State, local, or Indian Tribal government laws or regulations.

(b) Nothing in this part exempts State, local, or Indian Tribal governments from maintaining records of financial assistance or cost-type contracts and/or from providing access to such records to Federal Agencies, as provided for in Federal law, program regulations, or in 7 CFR part 3016.

(c) It is not intended that audits required by this part be separate and apart from audits performed in accordance with State, local, or Indian Tribal government laws. To the extent feasible, the audit work required by this part should be done in conjunction with those audits.

(d) An audit made in accordance with this part shall be in lieu of any financial audit required under individual USDA awards. To the extent that an audit made in accordance with this part provides USDA agencies with the information and assurances they need to carry out their overall responsibility, they shall rely upon and use such information. However, a USDA agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional USDA audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

§ 3050.6 Assignment of responsibilities.

(a) OFM shall:

(1) Assure USDA awarding agency implementation and compliance with this part; and

(2) Coordinate, consolidate, and prepare any reports on the effectiveness of implementing this part.

(b) Each USDA awarding agency shall:

(1) Assure that governmental entities implement and comply with this part.

(2) Require as a term of any USDA financial assistance or cost-type contracts to State, local, and Indian Tribal governments that single audits be conducted in a timely manner in accordance with the requirements of this part, and be submitted to a designated official in the USDA awarding agency and the OMB assigned cognizant agency, if one has been assigned, and OIG. The audit report shall be due within 30 days after the completion of the audit. The audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to between the cognizant or awarding agency and the recipient.

(3) Require that the recipient maintain records to identify the source and amounts of financial assistance or cost-type contracts received by using the Catalog of Federal Domestic Assistance numbers.

(4) Provide a copy of this part to recipients or subrecipients, upon request.

(5) Ensure required audits are conducted and audit reports are received from recipients or subrecipients, upon request.

(6) Determine if an audit report adequately addresses the agency's needs. If not, determine if a followup audit is necessary and advise OIG.

(7) Ensure that appropriate action is taken on all audit findings and recommendations pursuant to the Supplemental Appropriations and Rescission Act of 1980 (Public Law 96-304, 94 Stat. 857); OMB Circular A-50, "Audit Followup;" and Departmental Regulation 1720-1 which prescribes USDA's internal process for audit followup, management decisions, and final action.

(8) Coordinate with the recipient to seek corrective action on system deficiencies and resolution of other cross-cutting issues identified in the audit. Seek the views of affected Federal Agencies before entering into negotiations and obtain their concurrence before entering into a final agreement.

(9) Take appropriate action when the recipient either neglects to resolve findings or the report does not meet the requirements of OMB Circular A-128, including the imposition of sanctions. If USDA awarding agencies incur costs, the recipient shall not charge USDA for the cost of any audit that did not meet USDA requirements. However, if there was an indirect cost plan with audit costs included, the following year's indirect cost plan will offset the cost.

(10) Establish and maintain appropriate records as to the effectiveness of State, local, and Indian Tribal governments in carrying out the provisions of this part.

(11) Where State, local, and Indian Tribal governments receive financial assistance or cost-type contracts of less than \$100,000, and do not obtain audits that meet the requirements of appendix A of this part, ensure that Federal funds were spent in accordance with applicable laws and regulations. Any of the following can be used to determine recipient compliance with Federal requirements:

(i) Audits obtained by recipients conducted in accordance with the Government Auditing Standards issued by the Comptroller General of the United States.

(ii) Any other reasonably acceptable programmatic audit performed on the recipient's operations in that fiscal year.

(iii) Evaluations of recipient operations by USDA awarding agency officials.

(iv) Project audits by Federal auditors or audits obtained by recipients.

(12) Coordinate the responses on audit reports from other USDA awarding agencies if assigned as the lead agency.

(c) OIG shall:

(1) Provide technical advice and liaison to State, local, and Indian Tribal government audit officials; independent auditors; and other financial assistance or cost-type contract officials.

(2) Coordinate with other Federal Agencies to determine general oversight responsibility if a cognizant agency has not been designated by OMB. When the USDA OIG has general oversight responsibility, OIG shall provide technical advice, as appropriate, and may assume additional responsibilities such as conducting quality reviews of reports and the auditor's work. Any requests received from recipients or subrecipients for USDA to provide general oversight should be forwarded to the appropriate USDA OIG Regional Office.

(3) If assigned as the cognizant agency, determine whether audits have been performed by independent auditors in accordance with the requirements of appendix A of this part.

(4) Perform or arrange for quality reviews of selected audits and provide the results to other affected organizations. Determine whether to perform quality reviews of the report and/or the auditor's work in cases where audit quality or acceptability appear questionable.

(5) If assigned as the cognizant agency, advise the recipient and

awarding agency of any audit not in compliance with appendix A of this part. Work with the recipient and auditor to effect appropriate corrective action. If corrective action is not taken, notify the recipient and other awarding agencies. Major inadequacies or repetitive substandard performance by independent auditors shall be referred by OIG to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits performed by or for Federal Agencies that are in addition to the audits required by this part to ensure that the additional audits build upon previous audits performed.

(7) If assigned as the cognizant agency, promptly inform other affected Federal Agencies and appropriate Federal law officials of any reported illegal acts or irregularities. Also, inform State and local law enforcement and prosecuting authorities, if not otherwise advised by the recipient, of any violation of law within their jurisdiction.

(8) When requested by a USDA awarding agency, work with the awarding agency to arrange for additional audit coverage, as appropriate.

(9) Maintain appropriate records regarding assigned cognizant State, local, and Indian Tribal governments in carrying out the provisions of this part.

(10) Assess the handling of audit reports within USDA for compliance with this part.

(11) Where USDA has been assigned as the cognizant agency, provide coordination for USDA agencies and other Federal Agencies.

(d) State, local, and Indian Tribal governments shall:

(1) Follow the audit arrangements and requirements set forth in this part including the following:

(i) Use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in appendix A of this part.

(ii) Include provisions in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with appendix A of this part.

(iii) Ensure that their independent auditor is responsible for:

(A) Reviewing their systems for monitoring subrecipients and obtaining and considering the impact of the subrecipient audit reports. Also, include a review of the recipient's system for determining whether the subrecipient audit reports comply with Government Auditing Standards and generally accepted auditing standards.

(B) Testing to determine whether systems are functioning in accordance with prescribed procedures.

(C) Commenting on monitoring procedures, if warranted by the circumstances.

(D) Considering whether subrecipient audits require adjustment of their financial statements, footnote disclosure, or modification of the auditor's report.

(2) Establish a system for assuring that subrecipients meet the requirements of this part.

(3) Evaluate the acceptability of subrecipient audits.

(4) Follow-up on the results of subrecipient audits.

(i) Ensure that subrecipient audit reports are transmitted to the recipient. The recipient shall retain all subrecipient audit reports on file for 5 years and make them available to OIG and GAO officials or their designees upon request.

(ii) Take appropriate action on subrecipient audits and incorporate the results of these audits into their financial records and related reports. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(iii) Establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Appendix A to Part 3050—OMB Circular A-128, Audits of State and Local Governments

Executive Office of the President,
Office of Management and Budget,
Washington, DC 20603.

Circular No. A-128

April 12, 1985.

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive \$100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the

Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive \$100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between \$25,000 and \$100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than \$25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purpose of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resource use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit or local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by P.L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives \$25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular

A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) the financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) the organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the

newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

- the amounts reported as expenditures were for allowable services, and
- the records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

- matching requirements, levels of effort and earmarking limitations were met,
- Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
- amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.*

The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

- a statement of positive assurance with respect to those items tested for

compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

- negative assurance on those items not tested;
- a summary of all instances of noncompliance; and
- an identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than \$100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

- Withholding a percentage of assistance payments until the audit is completed satisfactorily,
- Withholding or disallowing overhead costs, and
- Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit

firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Circular A-128 Attachment

Definition of Major Program as Provided in P.L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between \$100,000 and \$100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of \$300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed \$100,000,000, the following criteria apply:

Total expenditures of federal financial assistance for all programs		Major federal assistance program means any program that exceeds
more than	but less than	
\$100 million	1 billion	\$3 million.
1 billion	2 billion	4 million.
2 billion	3 billion	7 million.
3 billion	4 billion	10 million.
4 billion	5 billion	13 million.
5 billion	6 billion	16 million.
6 billion	7 billion	19 million.
over 7 billion	20 million.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AWP-8]

Proposed Establishment of Class E Airspace; Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Mammoth Lakes, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 27 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mammoth Lakes Airport, Mammoth Lakes, CA.

DATES: Comments must be received on or before November 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 95-AWP-8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air

Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-AWP-8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to establish Class E airspace at Mammoth Lakes, CA. The development of a GPS SIAP has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 27 SIAP at Mammoth Lakes Airport, Mammoth Lakes, CA. Class E airspace designations are published in Paragraphs 6002 and 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposal rule will