DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

13 OCT 2000

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Department of Defense Transportation Incentive Program

The purpose of this memorandum is to revise the Department's policy on transportation incentives to conform to Executive Order 13150 of April 21, 2000 (Attachment 1). Under the Executive Order, President Clinton has directed Federal agencies to establish, by October 1, 2000, transportation fringe benefit programs in order to reduce Federal employees' contribution to traffic congestion and air pollution, and to expand their commuting alternatives. The Department of Defense strongly encourages commuting by mass transportation to reduce traffic congestion and improve air quality, and fully supports the President's initiative.

The Executive Order differentiates between employees working inside the National Capital Region (NCR) and those outside the NCR with respect to the kind of transportation incentives that must be offered by Federal agencies. However, as the largest Federal employer in many metropolitan areas around the Nation, we believe that the Department of Defense (DoD) should be a model employer and take appropriate action necessary to reduce the traffic congestion and air pollution that affect so many areas. We are also concerned that all DoD personnel be treated equitably. Therefore, we will offer the same incentive to all DoD personnel regardless of location inside or outside the NCR. Accordingly, Components will offer transportation incentives as indicated below and in Attachment 2. Transportation incentive programs will apply equally to all civilian employees and Military Service members, including nonappropriated fund (NAF) employees. Members of Reserve Components serving on active duty also are eligible for the incentive.

National Capital Region: DoD Component installations and activities in the NCR must implement, by October 1, 2000, a "transit pass transportation fringe" benefit for members/ employees utilizing mass transit or van pools as defined in Attachment 2. Under this program, in addition to their current compensation, Components must provide personnel vouchers or

similar items that may be exchanged only for transit passes in amounts that do not exceed personal commuting costs, up to the maximum allowed by the Internal Revenue Code (IRC) (currently $65/month; $100/month and indexed beginning January 2002). The Director, Washington Headquarters Services, will administer the program for civilian employees and Military Service members in the NCR. Parking costs will not be used in establishing commuter costs.

Outside the National Capital Region: DoD Component installations and activities outside the NCR must offer personnel a transportation incentive program identical to the program offered to personnel inside the NCR except where vouchers are not readily available as addressed in Attachment 2. If vouchers are not readily available for the employing DoD Component to provide to its members/employees, the DoD Component shall implement a cash reimbursement arrangement to reimburse its members/employees for expenses incurred or paid by them for transportation via mass transit or van pools as defined in Attachment 2. The reimbursement must be made under a bona fide reimbursement arrangement, which meets the rules of Internal Revenue Service regulations or other Internal Revenue Service guidance as addressed in references b. and d. of Attachment 2. In DoD, qualified and participating civilian employees and Military Service members shall be reimbursed by the Component after submitting a completed Standard Form 1164 (SF-1164), "Claim for Reimbursement for Expenditures on Official Business." The SF-1164 should clearly indicate that reimbursement is being requested under the transportation incentive program and the period for which reimbursement is being requested. Parking costs will not be used in establishing commuter costs. Each DoD Component shall be responsible for developing a comprehensive program for providing transportation incentives to civilian employees and Military Service members outside of the NCR. Components should implement their programs outside the NCR as expeditiously as possible.

Attachment 2 provides additional guidance for implementing the DoD transportation incentive program. Please assure that those responsible for implementing the program in your Component receive this memorandum and the attachments. Organizations responsible for transportation programs or facilities and parking management normally should have responsibility for administration of each Component's transportation incentive program.

Many of you have labor relations obligations that you must satisfy. To facilitate the accomplishment of these obligations, we recommend that you inform your unions about the transportation fringe benefits program as quickly as possible and be prepared to discuss any issues that arise. At the Department level, we have informed the eight national unions having consultation rights review about our implementation of the Order.

Rudy de Leon

Attachments:
As stated

Presidential Documents

Executive Order 13150 of April 21, 2000

Federal Workforce Transportation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Transportation Equity Act for the 21st Century (Public Law 105–178), section 1911 of the Energy Policy Act of 1992 (Public Law 102–486), section 531(a)(1) of the Deficit Reduction Act of 1984 (26 U.S.C. 132), and the Federal Employees Clean Air Incentives Act (Public Law 103–172), and in order to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives, it is hereby ordered as follows:

Section 1. *Mass Transportation and Vanpool Transportation Fringe Benefit Program.* (a) By no later than October 1, 2000, Federal agencies shall implement a transportation fringe benefit program that offers qualified Federal employees the option to exclude from taxable wages and compensation, consistent with section 132 of title 26, United States Code, employee commuting costs incurred through the use of mass transportation and vanpools, not to exceed the maximum level allowed by law (26 U.S.C. 132 (f)(2)). These agency programs shall comply with the requirements of Internal Revenue Service regulations for qualified transportation fringe benefits under section 1.132–9 of title 26, Code of Federal Regulations, and other guidance.

(b) Federal agencies are encouraged to use any nonmonetary incentive that the agencies may otherwise offer under any other provision of law or other authority to encourage mass transportation and vanpool use, as provided for in section 7905(b)(2)(C) of title 5, United States Code.

Sec. 2. *Federal Agencies in the National Capital Region.* Federal agencies in the National Capital Region shall implement a "transit pass" transportation fringe benefit program for their qualified Federal employees by no later than October 1, 2000. Under this program, agencies shall provide their qualified Federal employees, in addition to current compensation, transit passes as defined in section 132(f)(5) of title 26, United States Code, in amounts approximately equal to employee commuting costs, not to exceed the maximum level allowed by law (26 U.S.C. 132(f)(2)). The National Capital Region is defined as the District of Columbia; Montgomery, Prince George's, and Frederick Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

Sec. 3. *Nationwide Pilot Program.* The Department of Transportation, the Environmental Protection Agency, and the Department of Energy shall implement a "transit pass" transportation fringe benefit program, as described in section 2 of this order, for all of their qualified Federal employees as a 3 year pilot program by no later than October 1, 2000. Before determining whether the program should be extended to other Federal employees nationwide, it shall be analyzed by an entity determined by the agencies identified in section 4 of this order to ascertain, among other things, if it is effective in reducing single occupancy vehicle travel and local area traffic congestion.

Sec. 4. *Guidance.* Federal agencies shall develop plans to implement this order in consultation with the Department of the Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget. Federal agencies that currently have more generous programs or benefits in place may continue to offer those programs

or benefits. Agencies shall absorb the costs of implementing this order within the sums received pursuant to the President's FY 2001 budget request to the Congress.

Sec. 5. *Judicial Review.* This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
April 21, 2000.

[FR Doc. 00–10552
Filed 4–25–00; 8:45 am]
Billing code 3195–01–P.

Guidance
on the DoD
Transportation Incentive Program

References.

a. Executive Order 13150, "Federal Workforce Transportation."
b. Title 26, section 1.132-9, Code of Federal Regulations, "Qualified Transportation Fringes."
c. Title 5, section 7905, "Programs to Encourage Commuting by Means Other than Single Occupancy Vehicles."
d. Title 26, section 132(f), United States Code, "Certain Fringe Benefits."
e. Transportation Equity Act for the 21st Century (Public Law No. 105-178)
f. Section 1911 of the Energy Policy Act of 1992 (Public Law No. 102-486)
g. Federal Employees Clean Air Incentives Act (Public Law No. 103-172)

Background. Executive Order 13150 requires Federal agencies to establish transportation fringe benefit programs in order to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives. The purpose of the program is to provide financial incentives to members/employees to encourage commuting by mass transportation. This program must comply with the requirements of section 132 of title 26, United States Code, Internal Revenue Service regulations for qualified transportation fringe benefits under section 1.132-9 of title 26, Code of Federal Regulations, and other Internal Revenue Service guidance.

Definitions.

DoD Transportation Incentive Program. A DoD program whereby DoD provides transit passes to its members/employees or implements a cash reimbursement arrangement for its members/employees in order to reduce their contribution to traffic congestion, air pollution, and to expand their commuting alternatives.

Transit Pass Transportation Fringe Benefit. A nontaxable benefit whereby DoD provides vouchers or similar items (in amounts that do not exceed personal commuting costs, up to the maximum allowed by the Internal Revenue Code (IRC) (currently $65/month; $100/month and indexed beginning January 2002)) that may be exchanged only for transit passes to its members/employees.

Transit Pass. A "transit pass" is any pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation (a) On mass transit facilities (whether or not publicly owned); or (b) In van pools owned and operated either by public transit authorities or by a person in the business of transporting persons for compensation or hire. The van must seat at least six adults (excluding the driver).

Voucher. An item that may be exchanged only for a transit pass.

Attachment 2

Readily Available. A voucher or similar item is "readily available" if a Component can obtain it (1) On terms no less favorable than those available to an individual member/employee; and (2) Without incurring a significant administrative cost.

Cash Reimbursement Arrangement. A nontaxable cash reimbursement, in addition to regular compensation, by DoD to its members/employees for expenses incurred or paid by them for transit passes or for van pools. The term "cash reimbursement" does not include cash advances. A cash reimbursement arrangement is not authorized when vouchers are readily available.

Van Pool. The vehicle used must be a highway vehicle with a capacity of at least 6 adults excluding the driver. The vehicle may be owned and operated either by public transit authorities or by a person in the business of transporting persons for compensation or hire.

Operated by a Person in the Business of Transporting Persons for Compensation or Hire. A van pool is operated by a person in the business of transporting persons for compensation or hire when it is registered with the local transit authority and eligible to receive cash vouchers applicable to that local system or when it satisfies the requirements of IRC section 132(f)(5)(A)(ii) and is an activity engaged in for profit as that term is interpreted under IRC section 162. Also see Treasury Regulation section 1.183-2, for factors relevant in determining whether an activity is engaged in for profit. The owner of a van pool that is not registered with the local transit authority must certify to the Component that his or her activity satisfies the requirements of IRC section 132(f)(5)(A)(ii) and is an activity engaged in for profit as that term is interpreted under IRC section 162 before any member/employee can be reimbursed for expenses incurred in connection with use of that van pool. A Component may not provide legal advice to van pool operators on this subject. If advice is required by such an operator, the operator should consult with his attorney, accountant, et cetera to determine whether he or she meets these tests.

Eligibility. Transportation incentive programs shall apply equally to all military and civilian personnel, including nonappropriated fund (NAF) employees. Transit subsidies for NAF employees will be funded from the same source that is used for NAF salaries. Members of Reserve Components serving on active duty also are eligible for the incentive.

DoD Policy.

Department of Defense Component installations and activities shall budget for and provide transportation incentives to eligible members/employees as indicated below. Parking costs will not be used in establishing commuter costs.

Policy Within the National Capital Region (NCR). The NCR is defined as the District of Columbia; Montgomery, Prince George's, and Frederick Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties. DoD Component installations and activities in the NCR shall implement, effective October 1, 2000, a "transit pass transportation fringe benefit" for personnel that commute utilizing mass transportation or van pools. The highway vehicle used

for the van pool must be registered with the Washington Metropolitan Area Transit Authority in order to participate in the DoD Transportation Incentive Program. Under this program, DoD Components shall provide to personnel, in addition to their current compensation, vouchers that may be exchanged only for transit passes, purchased with existing funds, in amounts that do not exceed their actual commuting costs, up to the maximum allowed by the IRC, 26 USC 132(f)(2) (currently $65/month). The Director, Washington Headquarters Services (WHS), will administer the transportation incentive program in the NCR. The Department of Transportation (DoT) will assist the WHS in implementing the program.

Policy Outside of the National Capital Region. Outside of the NCR is defined as the 50 states (exclusive of the area included in the definition of the NCR above), the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. DoD Component installations and activities outside the NCR shall implement a transportation incentive program identical to the program offered to employees inside the NCR except where vouchers are not readily available.

If vouchers are readily available, DoD Components shall provide to members/employees, in addition to their current compensation, vouchers in amounts that do not exceed their actual commuting costs, up to the maximum allowed by the IRC, 26 USC 132(f)(2) (currently $65/month).

If vouchers are not readily available for the DoD Component to provide to members/employees, the DoD Component shall implement a cash reimbursement arrangement to reimburse its employees/members for expenses incurred or paid by them for transportation in mass transit or van pools.

Substantiation requirements. Components that make cash reimbursements must establish a bona fide reimbursement arrangement to establish that their members/employees have, in fact, incurred expenses for transportation for transit passes or van pools. What constitutes a bona fide reimbursement arrangement may vary depending on the facts and circumstances, including the method or methods of payment used within the mass transit system. Each Component must implement reasonable procedures to ensure that an amount equal to the reimbursement was incurred for transit passes or transportation in a commuter highway. Members/employees shall submit a completed Standard Form 1164 (SF-1164), "Claim for Reimbursement for Expenditures on Official Business." The member/employee should clearly indicate in block 6 of the SF-1164 that the member/employee is seeking reimbursement under the DoD Transportation Incentive Program. The SF-1164 should indicate the method of transportation, the period for which the member/employee is seeking reimbursement, and the amount of reimbursement that the member/employee is seeking. The DoD Component may elect to offer reimbursement on either a monthly or quarterly basis. The following are examples of reasonable reimbursement procedures:

(1) A member/employee submits an SF-1164 to the Component at the end of the month, attaches a used transit pass, and certifies both that he or she purchased it, and that he or she used it during the month solely for the purpose of commuting to and from work. Block 6 of the SF-1164 should indicate that the member/employee is seeking reimbursement under the DoD Transportation Incentive Program. The SF-1164 should also indicate the method of

transportation, the period for which the member/employee is seeking reimbursement, and the amount of reimbursement the member/employee is seeking. The Component must have no reason to doubt the member's/employee's certification.

(2) A member/employee submits an SF-1164 to the Component at the beginning of the month along with a transit pass and certifies that it will be used during the month solely for the purpose of commuting to and from work. Block 6 of the SF-1164 should indicate that the member/employee is seeking reimbursement under the DoD Transportation Incentive Program. The SF-1164 should also indicate the method of transportation, the period for which the member/employee is seeking reimbursement, and the amount of reimbursement the member/employee is seeking. The Component must have no reason to doubt the member's/employee's certification.

(3) If a receipt is not provided in the ordinary course of business (e.g., if used transit passes cannot be returned to the user), the employee may certify to the Component on an SF-1164 the type and the amount of expenses incurred and the period in which the expenses were incurred. The Component must have no reason to doubt the member's/employee's certification.

Members of the Reserve Components. Members of the Reserve Components who are performing active duty for more than 30 days shall be entitled to the same benefits, and apply for those benefits in the same manner, as is applicable to members/employees in the same geographic area. Members of the Reserve Components who are performing active duty for 30 days or less in an area eligible for benefits under the DoD Transportation Incentive Program may receive benefits under the cash reimbursement arrangement regardless of where they perform duty.

Responsibilities.

DoD Component. Each DoD Component shall be responsible for developing and budgeting for a comprehensive program that implements the DoD transportation incentive program for members/employees outside of the NCR. As indicated above, DoD Components must implement and administer a transit pass transportation fringe benefit for members/employees outside the NCR if transit passes are readily available. If transit passes are not readily available, DoD Components must implement a cash reimbursement arrangement. In addition, each DoD Component shall be responsible for budgeting for the cost of the transit subsidy benefit inside of the NCR, working with the WHS to administer the program.

Each Component shall appoint an Office of Primary Responsibility (OPR) to manage its transportation incentives program. The program OPR shall be responsible for: (a) developing the method for processing requests for participation; (b) making determinations of eligibility, including performing a review of the application forms and certifying that applicants are eligible to participate in the transportation incentives program; (c) purchasing and distributing the transportation vouchers to eligible participants; (d) establishing internal controls for the program; (e) revalidating employee information to ensure the accuracy of the information for program execution; and (f) performing periodic reconciliation to ensure employee accounts are correct. In areas where vouchers are not available, the OPR must ensure that the cash reimbursement

arrangement is offered and perform all of the above responsibilities except (f).

Defense Finance and Accounting Service (DFAS). The DFAS shall disburse transportation fringe benefits based on the approved SF-1164, in regions in which the DFAS provides the applicable Components with disbursing services. The DFAS shall process Standard Forms 1164, disburse transportation fringe benefits based on approved SF-1164s, and shall bill customers for processing costs consistent with Defense Working Capital Fund (DWCF) rules. Such payments to individuals are not taxable income and will not be reported to the Internal Revenue Service on W-2 or TD 1099 reports.

Members/Employees. Members/employees must ask to participate in the transportation incentive program. Each member/employee must submit an application that documents his or her commuting expenses in order to participate in the transportation incentive program. This application shall certify that the employee/member uses mass transit or an eligible van pool to commute from home to work and shall also certify the member's/employee's monthly expenses for such transportation. DoD Component members/employees shall furnish transportation incentive information to the Component OPR that identifies as a minimum: the member's/employee's name, the mode of mass transportation used when commuting, the monthly commuting costs, and certification that the information provided is accurate. In areas where transit passes are not available, qualified and participating DoD Component employees and members shall be reimbursed by the Component, after submitting to the Component a completed SF-1164, "Claim for Reimbursement for Expenditures on Official Business."

Transportation Administration Services Center (TASC). A special unit within the DoT, the Transportation Administration Services Center (TASC), has been established to assist Federal agencies in the administration of their transportation incentive programs both within and outside the NCR. For a fee, the TASC will assist Components in establishing the mechanism for contacting employees, establishing systems of records and internal controls, and purchasing and distributing transit passes. It is recommended that DoT assistance be used where available. The TASC point of contact is Mr. Eric Smith. He can be reached at (202) 366-2090.

Funding.

DoD Components shall fund the transit subsidy benefit using existing budgetary resources and without supplemental funding. To keep this benefit aligned with compensation, the costs for this transportation subsidy shall be budgeted in the same appropriation/fund that pays compensation costs of the affected individuals. Therefore, the civilian personnel transportation subsidy benefit shall be budgeted in the appropriation/fund which finances their compensation and the military personnel transportation subsidy benefit should be budgeted in the appropriate military personnel appropriation.

Because the subsidy for NAF employees is funded out of NAF resources, it would reduce the NAF resources available to support programs. In order to mitigate such reductions, the military departments may budget additional appropriated fund support to offset the cost of the transit subsidy.