

PART 71—[AMENDED]

- 1. The authority citation for part 71 continues to read as follows:
Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.
- 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

§ 71.1 [Amended]

Paragraph 6004—Class E airspace areas extending upward from the surface of the earth.

* * * * *

ANE ME E4 Brunswick, ME [Revised]

Brunswick NAS, ME
 (Lat. 43°53'32"N, long. 69°56'19"W)

That airspace extending upward from the surface within 3 miles each side of the 169° bearing from the Brunswick NAS extending from the 4.3-mile radius of the airport to 6.5 miles south of the airport and within 2 miles each side of the 017° bearing from the Brunswick NAS extending from the 4.3-mile radius of the airport to 9.5 miles northeast of the airport.

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Issued in Jamaica, New York, on May 18, 2005.

John G. McCartney,
Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–10419 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17178; Airspace Docket No. 03–AWA–7]

RIN 2120–AA66

Establishment of Prohibited Area 51; Bangor, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a prohibited area (P–51) over the U.S. Naval Submarine Base, at Bangor, WA. The prohibited area replaces a Temporary Flight Restriction (TFR) that is currently in effect. The FAA is taking this action in response to a request from the U.S. Navy as part of its efforts to enhance the security of the Naval Submarine Base, Bangor, WA.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 28, 2004, the FAA published a notice in the **Federal Register**, proposing to establish a prohibited area over the U.S. Naval Submarine Base, Bangor, WA (69 FR 36031). The FAA proposed this action, at the request of the U.S. Navy, to enhance the security of the Bangor facility. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. The FAA received 576 comments in response to this notice. All comments, including those addressed to Members of Congress, were considered. Although the official comment period ended August 12, 2004, comments were received through September, 2004, and were considered in this rulemaking action. The FAA believed due to the intense public interest and the comments on file, that extending the official deadline would not have resulted in any additional information that would have contributed to our decision making process.

Analysis of Comments

The vast majority of these comments expressed general opposition to the proposal. The following is a discussion of the substantive comments received.

A number of comments suggested that other large military facilities in California and Virginia do not have Temporary Flight Restrictions (TFR's) and that the restrictions were established in an inconsistent manner. They also pointed out that there is no credible terrorism threat here in the United States that would warrant such restrictions.

Other large naval facilities, such as those in California and Virginia, do not have the same operational requirements or mission as that at U.S. Naval Submarine Base, Bangor, WA. The attacks of September 11, 2001, exposed weaknesses in the defense of U.S. assets. Today, some critics still claim the necessary steps to prevent terrorist attacks have not been taken. P–51 will allow the Navy to protect vital U.S. assets (TRIDENT submarines) by preventing aircraft over flights at low altitude.

A few commenters stated there is not enough time to scramble aircraft to intercept hostile aircraft.

The FAA does not agree. Establishing a prohibited area will give the government the time to react if an aircraft enters the area. The government's intention would be for taking defensive measures on the surface to preparing to use lethal force from air or ground naval assets.

Some commenters stated that if a terrorist wants to fly an aircraft into a submarine, P–51 will not prevent them from doing so. Terrorists don't follow the rules.

The FAA agrees. However, the Navy aggressively pursues a multitude of defense measures to deter an airborne attack. Each of these measures includes identification of potential hostile aircraft. The only feasible way for early identification is to prevent low altitude flight over the facilities. Aircraft violating P–51 will draw the attention of security forces and may provide the time needed to take the actions necessary to protect the people, submarines, and buildings on the ground.

Numerous comments were received stating that general aviation aircraft (GA) are not viable threats. (The commenters cited the suicidal pilot in a small aircraft that crashed his plane into an office building, in Florida causing very little damage.) They stated that a small aircraft fully loaded with explosives would not damage a submarine.

The FAA does not agree. The characteristics and design of TRIDENT submarines are classified and, therefore, we are unable to discuss them in specifics. However, the FAA does believe the potential for serious damage to the submarine does exist, whether it is from a direct impact or from collateral damage (fire, flood, etc.) around or near the submarine.

Some commenters pointed out that P–51 will only serve to advertise U.S. Naval Submarine Base Bangor as a target for terrorist.

The FAA does not agree. There has never been any secrecy to the existence or the location of U.S. Naval Submarine Base, Bangor, in Washington state; which can be sourced and confirmed on the Internet. The important issue is that we protect our national assets instead of hoping terrorists are not aware of the locations.

Several commenters including the Aircraft Owners and Pilots Association (AOPA) stated that P–51 conflicts with V–165/V–287 because the width of these airways is 4NM each side of the centerline.

The FAA does not agree. The minimum enroute altitude for the segment of V-165/V-287 that runs directly west of P-51 is above the altitude of P-51. Hence, there is no conflict between P-51 and V-165/V-287.

Some commenters stated that P-51 will interfere with the Bremerton ILS RWY 19 instrument approach.

The FAA agrees. The southern boundary of P-51 is 7.5 miles north of the Bremerton ILS RWY 19 Outer Marker Compass Locator (LOM). Aircraft conducting the full ILS approach are required to remain within 10 miles of the LOM when executing a procedure turn. Bremerton ILS RWY 19 approach will have to be modified by either adding a restriction to remain at/above 3,000 feet until southbound on the procedure turn or eliminate the procedure turn segment of the route altogether. The Bremerton ILS approach, as it is charted today, will be impacted; but it can be modified to remain clear of P-51 to eliminate any conflict between the approach and P-51.

A number of commenters stated that P-51 poses a hazard to GA aircraft because at times of lower cloud layers, they cannot climb above P-51.

The FAA does not agree. When the Bangor TFR was first implemented in 2001, it was inconvenient for aircraft to circumnavigate during periods of inclement weather. The Navy and the FAA, in response to the public, significantly reduced the size of area by modifying the TFR to accommodate the desires of the general aviation community and minimized the distance required to circumnavigate the flight restriction. With the designation of P-51, the altitude of the existing area is reduced from 4,900 feet to 2,500 feet Mean Sea Level (MSL) further reducing the burden on general aviation.

Some commenters stated that P-51 will cost the GA pilot more money for extra fuel and engine time while circumnavigating the area.

The FAA agrees. However, if an aircraft were transiting south to north along the Hood Canal and began to circumnavigate just south of P-51, the aircraft would fly approximately an additional two (2) nautical miles to avoid P-51 and continue on course. The additional distance required to circumnavigate P-51 is considered minimal when compared to the national security benefit associated with establishing P-51. Moreover, instead of circumnavigating P-51, the aircraft operator can transit the area above 2,500 feet MSL.

A lot of comments were received stating that P-51 will only add

congestion for VFR aircraft transiting west of Seattle Class B airspace because a natural corridor lies between the mountainous terrain and P-51.

The public commenters are correct. However, the combination of National Security Areas (NSA) is the real complicating factor, not Bangor itself. The three existing NSAs (Bremerton, Everett, and Port Townsend) were established on December 23, 2004. The presence of the NSAs significantly increase the complexity of this area. However, while the NSAs do add to the complexity of flying between the Class B and the mountainous terrain, it is important to note that staying clear of the NSA is voluntary and those areas are still available for transit.

Several commenters suggested reducing the altitude to 1,000 feet MSL because the area would be more manageable for GA.

The FAA does not agree. A prohibited area from the surface to 1,000 feet MSL would make it virtually impossible to differentiate between a threat and a non-threat aircraft. P-51, as detailed in the NPRM, significantly reduces the altitudes of the existing Bangor TFR, FDC Notice 4/2125, which pilots have endured for 3 years now. The proposed P-51 reduces the altitude to below 2,500 feet MSL (*i.e.* surface up to but not including 2,500') from its current 4,900 feet altitude as a TFR. The FAA reduced the altitude of the original U.S. Navy request from 4,900 feet MSL in order to lessen the impact on GA operations. Also, this lowered altitude allows air traffic control to provide standard instrument flight rule (IFR) services in the area, with minimal adverse impact from the presence of the proposed P-51.

Several commenters, including AOPA, stated that P-51 will affect flight operations at both Apex airport and Poulsbo seaplane base.

The FAA does not agree. The dimensions of P-51 do not affect flight into those airports. It was brought up as a concern prior to the latest modification of the previous TFR. Poulsbo seaplane base is located over 1.5 nautical miles from the outer boundary of P-51. Apex airport is located 1.75 nautical miles from the outer boundary of P-51. Additionally, the southwest corner of P-51 was specifically modified so that aircraft could depart to the north or arrive from the south without excessive maneuvering.

A number of commenters expressed concern that the area is not well defined and difficult to avoid prompting some aviators to avoid flying in the area.

The FAA disagrees. P-51, is defined by five longitude latitude points making

it relatively easy to avoid for GPS equipped aircraft, Non-GPS equipped aircraft can use Dabob Bay to the West, Highway 3 to the East and South, and Highway 104 to the North as visual references to avoid P-51.

Comments were received suggesting the FAA should lower Seattle's Class B airspace to include the U.S. Naval Submarine Base, Bangor, and let the FAA maintain control of all aircraft in the area.

The FAA does not agree. Class B airspace is clearly defined as controlled airspace surrounding a major airport protecting the arrival/departure routes for that airport's turbojet aircraft. Under existing regulations, Class B airspace is not designed to provide restricted access for security reasons. These comments are, therefore, beyond the scope of this rule.

Many comments suggested the new regulation will only end up in the issuance of flight violations for law-abiding aviators who become lost or disoriented.

The FAA does not agree. P-51 will be published on the Seattle sectional and VFR Terminal Area navigational charts which will provide the GA pilot visual references of the location.

Several commenters expressed concern that P-51 will be a hazard to GA and the surrounding area if air defense measures are implemented against an aircraft. A pilot could be unnecessarily shot down because they were lost.

The FAA does not agree. Safety of general aviation and the general public is of the utmost importance and one reason P-51 is being considered. Since a prohibited area is published on navigational charts and identifies the area to avoid, incursion into P-51 will not automatically equate to lethal force, but will draw the attention of the defense force. What P-51 will do, is make it easier to identify aircraft that do pose a threat because low altitude over flights will not be the norm.

A number of comments, including AOPA, the Experimental Aircraft Association (EAA), Washington Seaplane Pilots Association, Washington Air Search and Rescue, and the Canadian Owners and Pilots Association, recommended establishing a NSA instead of a Prohibited Area.

The FAA does not agree. NSAs are voluntary in nature and do not prohibit aircraft over flight. An NSA would allow the opportunity for low-flying aircraft to routinely transit the airspace over, U.S. Naval Submarine Base, Bangor, making identification of aircraft extremely difficult and increasing the potential for an accident to occur. The

submarine berthing at U.S. Naval Submarine Base, Bangor, is a vital national asset and has been determined to be in the interest of national defense to protect the facilities with prohibited airspace. By sterilizing the airspace above these facilities and assets, defense forces can more easily identify aircraft displaying hostile intent and, if necessary, take appropriate action.

A commenter stated an environmental assessment should still be done, and another stated the FAA had not complied with the EPA.

The FAA does not agree. Designation of prohibited areas is categorically excluded from environmental actions under the National Environmental Policy Act in accordance with FAA Order 1050.1E Paragraphs 303d, 311a, and 312d.

Another commentator pointed out, that even if there were a valid security concern justifying the proposed P-51, the FAA should not consider establishing a new prohibited area while a) the proposed prohibited area at St. Marys, GA is still pending, and b) the FAA continues to fail to provide the legally required documentation to Congress regarding the justification for the continued existence of the Temporary Flight Restrictions and DC-area ADIZ that have existed for nearly three years now.

The FAA disagrees. The prohibited airspace being established over U.S. Navy Submarine Base, Bangor, has been determined to be in the interest of national defense. The issue of required documentation to Congress concerning the DC-area ADIZ is outside the scope of this action. The situation concerning St. Marys is being addressed in separate rulemaking action.

A commenter stated this action should be considered a major action and requires a regulatory evaluation.

The FAA does not agree. In accordance with Executive Order 12886, this action is not a significant rule, under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation.

Statutory Authority

The FAA Administrator has broad authority under Title 49 of the United States Code (49 U.S.C.) to regulate the use of the navigable airspace. In exercising that authority, the Administrator is required to give consideration to the requirements of national defense, commercial and general aviation, and the public's right of freedom of transit through the navigable airspace (49 U.S.C. 40101). The Administrator is also empowered to

develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace (49 U.S.C. 40103(b)). Additionally, the Administrator shall, in consultation with the Secretary of Defense, establish areas in the airspace the Administrator decides are necessary in the interest of national defense (49 U.S.C. 40103(b)(3)(A)). In consideration of the statutory authority above, the Secretary of Defense and the Administrator of the FAA have determined this action necessary in the interest of national defense.

The Rule

In response to the U.S. Navy request, the FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 by designating P-51 over the U.S. Naval Submarine Base at Bangor, WA. P-51 consists of that airspace from the surface up to, but not including, 2,500 feet MSL, to include base property on the east side of the Hood Canal, the water across the Hood Canal, and the base owned land portion of the Toandos Peninsula. No person may operate an aircraft within a prohibited area unless authorization has been granted by the using agency.

The FAA has determined that this 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 Department of Transportation, (DOT) Regulatory Policies and Procedures (44 FR 11034; 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion from further environmental analysis under the National Environmental Policy Act in accordance with FAA Order 1050.1E Paragraphs 303d, 311a, and 312d.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

For administrative purposes and ease of documentation we are listing all current Prohibited Areas in sections 73.87-73.91.

§ 73.93 [New]

■ 2. § 73.93 is added as follows:

§ 73.87

P-56 District of Columbia

Boundaries. A. Beginning at the southwest corner of the Lincoln Memorial (lat. 38°53'20"N., long. 77°03'02" W.); thence via a 327° bearing, 0.6 mile, to the intersection of New Hampshire Avenue and Rock Creek and Potomac Parkway, NW (lat. 38°53'45" N., long. 77°03'23" W.); thence northeast along New Hampshire Avenue, 0.6 mile, to Washington Circle, at the intersection of New Hampshire Avenue and K Street, NW (lat. 38°54'08" N., long. 77°03'01" W.); thence east along K Street, 2.5 miles, to the railroad overpass between First and Second Streets, NE (lat. 38°54'08" N., long. 77°00'13" W.); thence southeast via a 158° bearing, 0.7 mile, to the southeast corner of Stanton Square, at the intersection of Massachusetts Avenue and Sixth Street, NE (lat. 38°53'35" N., long. 76°59'56" W.); thence southwest via a 211° bearing, 0.8 mile, to the Capitol Power Plant at the intersection of New Jersey Avenue and E Street, SE (lat. 38°52'59" N., long. 77°00'24" W.); thence west via a 265° bearing, 0.7 mile, to the intersection of the Southwest Freeway (Interstate Route 95) and Sixth Street, SW extended (lat. 38°52'56" N., long. 77°01'12" W.); thence north along Sixth Street, 0.4 mile, to the intersection of Sixth Street and Independence Avenue, SW (lat. 38°53'15" N., long. 77°01'12" W.); thence west along the north side of Independence Avenue, 0.8 mile, to the intersection of Independence Avenue and 15th Street, SW (lat. 38°53'16" N., long. 77°02'01" W.); thence west along the southern lane of Independence Avenue, 0.4 mile to the west end of the Kutz Memorial Bridge over the Tidal Basin (lat. 38°53'12" N., long. 77°02'27" W.); thence west via a 285° bearing, 0.6 mile, to the southwest corner of the Lincoln Memorial, to the point of beginning.

B. That area within a 1/2-mile-radius from the center of the U. S. Naval Observatory located between Wisconsin and Massachusetts Avenues at 34th Street, NW (lat. 38°55'17" N., long. 77°04'01" W.).

Designated altitudes. Surface to 18,000 feet MSL.

Time of designation. Continuous.

Using agency. United States Secret Service, Washington, DC.

Amendments 3/25/99 64 FR 13334 (Amended)**§ 73.89****P-47 Amarillo, TX**

Boundaries. Beginning at lat. 35°21'09" N., long. 101°37'05" W.; to lat. 35°21'11" N., long. 101°32'29" W.; to lat. 35°18'09" N., long. 101°32'29" W.; to lat. 35°18'09" N., long. 101°34'50" W.; to lat. 35°17'55" N., long. 101°35'10" W.; to lat. 35°17'55" N., long. 101°35'39" W.; to lat. 35°19'05" N., long. 101°35'42" W.; to lat. 35°19'05" N., long. 101°36'06" W.; to lat. 35°18'02" N., long. 101°36'29" W.; to lat. 35°18'02" N., long. 101°37'05" W.; to the point of beginning.

Designated altitudes. Surface to 4,800 feet MSL (1,200 feet AGL).

Time of designation. Continuous.

Using agency. Manager, Pantex Field Office, Department of Energy, Amarillo, TX.

P-49 Crawford, TX

Boundaries. That airspace within a 3 NM radius of lat. 31°34'45" N., long. 97°32'00" W.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. Continuous.

Using agency. United States Secret Service, Washington, DC.

Amendments 5/15/03 68 FR 7917 (Amended)**§ 73.90****P-40 Thurmont, MD**

Boundaries. That airspace within a 3 NM radius of the Naval Support Facility, lat. 39°38'53" N., long. 77°28'00" W.

Designated altitudes. Surface to but not including 5,000 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.91**P-73 Mount Vernon, VA**

Boundaries. That airspace within a 0.5-mile radius of lat. 38°42'28" N., long. 77°05'10" W.

Designated altitudes. Surface to but not including 1,500 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.93 [New]**P-51 Bangor, WA [Added]**

Boundaries: Beginning at lat. 47°46'31" N., long. 122°46'12" W.; to lat. 47°46'29" N., long. 122°41'31" W.; to lat. 47°41'42" N., long. 122°41'27" W.; to lat. 47°41'40" N., long. 122°44'11" W.; to lat. 47°43'19" N., long. 122°46'09" W.; to the point of beginning.

Designated Altitudes. Surface to but not including 2,500 MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.94**P-67 Kennebunkport, ME**

Boundaries. A circular area of 1-mile radius centered on lat. 43°20'40" N., long. 70°27'34" W.

Designated altitudes. Surface to 1,000 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

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Issued in Washington, DC on May 16, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05-10371 Filed 5-24-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 1271**

[Docket No. 1997N-0484T]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to amend certain regulations regarding the screening and testing of donors of human cells, tissues, and cellular and tissue-based products (HCT/Ps), and related labeling. FDA is taking this action in response to comments from affected interested persons regarding the impracticability of complying with certain regulations as they affect particular HCT/Ps.

DATES: The interim final rule is effective May 25, 2005. Submit written or electronic comments on the interim final rule by August 23, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 1997N-0484T, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.

- E-mail: fdadockets@oc.fda.gov. Include Docket No. 1997N-0484T in the subject line of your e-mail message.

- FAX: 301-827-6870.

- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]:

Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received will be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IX in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:**I. Background**

We (FDA), have issued three final rules to implement a comprehensive new system for regulating HCT/Ps in part 1271 (21 CFR part 1271). The final rules are as follows:

- Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing (66 FR 5447, January 19, 2001) (registration final rule);

- Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (69 FR 29786, May 25, 2004) (donor-eligibility final rule); and

- Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Product Establishments; Inspection and Enforcement (69 FR 68612, November 24, 2004) (CGTP final rule).

This interim final rule is making changes in response to comments from affected interested persons regarding the impracticability of complying with certain regulations as they affect particular HCT/Ps, as well as certain other editorial changes.

II. Legal Authority

We are issuing these regulations under the authority of section 361 of the