DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 1806, 1822, 1902, 1925, 1930, 1940, 1942, 1944, 1951, 1955, 1956, 1965, 3560, and 3565

RIN 0575–AC13

Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: The Rural Housing Service is correcting an interim final rule published on November 26, 2004, (69 FR 69032–69176). This action is taken to correct an error regarding the comment period and effective date of the rule as stated in the preamble.

DATES: *Effective Date:* November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–1660.

SUPPLEMENTARY INFORMATION:

Need for Correction

The preamble of the interim final rule lists a comment period and effective date that conflicts with the **DATES** section. This document corrects that information.

Correction of Publication

In the interim rule document published November 26, 2004, (69 FR 69032–69176), make the following correction.

On page 69034, third column, revise the ''Discussion of the Interim Final Rule'' section to read as follows:

Discussion of the Interim Final Rule

This interim final rule combines the provisions of the Streamlining and Consolidation of the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs Proposed Rule published on June 2, 2003, and the Operating Assistance for Off-Farm Migrant Farmworker Projects Proposed Rule published on November 2, 2000.

RHS is issuing this regulation as an interim final rule, with an effective date 90 days after publication in the **Federal Register**, given that these regulatory changes are very extensive, affect all aspects of the programs, and seek to achieve significant streamlining of the programs' regulatory provisions. Delaying implementation of the rule to allow more time for further consideration would not be in the best interest of the direct MFH program or its recipients. All provisions of this regulation are adopted on an interim final basis, are subject to a 30-day comment period, and will remain in effect until the Agency adopts a final rule.

Dated: December 3, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–27604 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA–2003–16137; Airspace Docket 03–ANM–07]

Establishment of Class E Airspace; Lexington, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will establish Class E airspace at Lexington, OR. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Lexington Airport, Lexington, OR, makes this action necessary to add Class E airspace. This Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the containment and safety of Instrument Flight Rules (IFR) aircraft transitioning to/from the en route environment and executing these SIAP procedures.

DATES: *Effective Dates:* 0901 UTC, January 20, 2005

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Operations, Airspace Branch, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2003, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) to add Class E airspace at Lexington OR (69 FR 19317). A new RNAV GPS SIAP at the Lexington Airport makes it necessary to add controlled airspace for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing these SIAP procedures.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Lexington Airport, Lexington, OR. A new RNAV GPS SIAP at Lexington Airport makes it necessary for additional controlled airspace extending upward from 700 feet or more above the surface of the earth for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing these SIAP procedures.

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 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 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 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.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Lexington, OR [Add]

Lexington Airport, Lexington, OR
(Lat. 45°27′15″N., long. 119°41′25″W.)

The airspace extending upward from 700 feet above the surface of the earth within a 7.0 mile radius of the Lexington Airport; that airspace extending upward from 1200 feet above the surface of the earth beginning at lat. 45°14′00″N., long 119°33′00″W.; to lat. 45°39′26″N., long. 121°08′59″W.; to lat. 45°48′00″N., long. 121°06′30″W.; to lat. 45°38′52″N., long. 120°09′08″W.; to lat. 45°36′12″N., long. 119°45′28″W.; to lat. 45°43′09″N., long. 119°11′57″W.; to lat. 45°31′26″N., long. 119°06′04″W.; thence to the beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on November 26, 2004.

Suzanne Alexander,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 04–27686 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9164]

RIN 1545–BC33

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning requirements for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. The temporary regulations provide guidance on the definition and effects of a prohibited allocation under section 409(p), identification of disqualified persons and determination of a nonallocation year, calculation of synthetic equity under section 409(p)(5), and standards for determining whether a transaction is an avoidance or evasion of section 409(p). These temporary regulations generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 17, 2004.

Applicability Dates: These temporary regulations are applicable with respect to plan years beginning on or after January 1, 2005, but see § 1.409–1T(i)(2) for specific exceptions.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 409(p) was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38) (2001) to address concerns about ownership structures involving S corporations and ESOPs that concentrate the benefits of the ESOP, directly or indirectly, in a small number of persons. Under the statute, an ESOP is generally permitted to hold S corporation stock, provided that the ESOP benefits a sufficiently broad-based group of employees.

Section 4975(e)(7) provides that an ESOP is a defined contribution plan that is designed to invest primarily in qualifying employer securities and that is either a stock bonus plan which is qualified, or a stock bonus plan and money purchase pension plan both of which are qualified, under section 401(a). A plan is not treated as an ESOP under the Internal Revenue Code (Code) unless it meets the following requirements, to the extent applicable: Section 409(e) (relating to participants' voting rights if the employer has a registration-type class of securities); section 409(h) (relating to participants' right to receive employer securities; put options); section 409(o) (relating to participants' distribution rights and payment requirements); section 409(n) (relating to securities received in transactions to which section 1042 applies); section 409(p) (relating to prohibited allocations of securities in an S corporation); and section 664(g) (relating to qualified gratuitous transfers of qualified employer securities). As authorized by section 4975(e)(7), additional requirements for ESOPs are imposed under § 54.4975–11 of the Excise Tax Regulations.

Section 511 imposes an income tax on unrelated business taxable income (UBTI), as defined in section 512. Section 512(e)(1) generally provides that an interest in an S corporation held by an organization described in section 1361(c)(6), including a qualified plan, is treated as an interest in an unrelated trade or business. However, section 512(e)(3) has an exception for employer securities held by an ESOP, so that an ESOP of an S corporation generally does not have UBTI under section 512 with respect to the S corporation stock held by the ESOP.

Section 409(p)(1) requires an ESOP holding employer securities consisting of stock in an S corporation to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person, as defined in section 409(p). Section 409(p)(3)(A) provides that a ''nonallocation year'' includes any plan year during which the ownership of the S corporation is so concentrated among disqualified persons that they own or are deemed to own at least 50 percent of its shares. Section 409(p)(4) provides, in general, that whether someone is a ''disqualified person'' depends on a person's deemed-owned shares of S corporation stock held by an ESOP (deemed-owned ESOP shares). Section 409(p)(4) provides, in general, that a ''disqualified person'' means any person whose deemed-owned ESOP shares are at least 10 percent of the number of deemed-owned ESOP shares or for whom the aggregate number of deemed-owned ESOP shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares.

The determination of whether someone is a disqualified person and whether a plan year is a nonallocation year is also made separately taking into account synthetic equity. Synthetic equity is a general classification unique to section 409(p). The provisions relating to synthetic equity do not modify the rules relating to S corporations, *e.g.*, the circumstances in which options or similar interests are treated as creating a second class of stock. H.R. Conf. Rep. No. 107–84, at 102 n. 52. Under the rules for the treatment of synthetic equity at section 409(p)(5), if a person owns synthetic equity in an S corporation, then the