

9-32F, DC-9-32F (C-9A, C-9B), DC-9-33F, DC-9-34, DC-9-34F, DC-9-41, and DC-9-51 airplanes, certificated in any category.

#### Unsafe Condition

(d) This AD results from reports that the foil wrapping on existing plastic clamp bases has migrated out of position, which compromises the bonding of the fuel vent lines to the airplane structure. We are issuing this AD to ensure that the fuel vent lines are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, and create an ignition source, which could result in a fuel tank explosion.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Clamp Base Replacement

(f) Within 60 months after the effective date of this AD, replace the existing clamp bases for the fuel vent line with improved metal clamp bases, by doing all of the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9-28-211, Revision 1, dated June 21, 2006. Any corrective action that is required following the conductivity verification, which is included in the replacement procedures, must be done before further flight.

#### Replacement Accomplished in Accordance With Previous Issue of Service Bulletin

(g) Replacement of clamp bases accomplished before the effective date of this AD in accordance with Boeing Service Bulletin DC9-28-211, dated February 23, 2005, is acceptable for compliance with the corresponding action required by paragraph (f) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Material Incorporated by Reference

(i) You must use Boeing Service Bulletin DC9-28-211, Revision 1, dated June 21, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the

Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on August 18, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-14289 Filed 8-29-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 95

[Docket No. 30510; Amdt. No. 463]

#### IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, September 28, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for

Federal airways, jet routes, or direct routes as prescribed in part 95.

#### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

#### Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on August 23, 2006.

**James J. Ballough,**

*Director, Flight Standards Service.*

#### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation

Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 28, 2006.  
 ■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS  
 [Amendment 463 effective date, September 28, 2006]

From	To	MEA	MAA
<b>§ 95.1001 Direct Routes—U.S.</b>			
<b>Atlantic Routes—AR3</b>			
Is amended to read in part:			
Carps, FL FIX .....	Perie, OA FIX .....	2500	45000
Oldey, SC FIX .....	Panal, OA FIX .....	2500	45000
Panal, OA FIX .....	Carolina Beach, NC NDB .....	2500	45000
<b>Atlantic Routes—AR4</b>			
Is amended to read in part:			
Ashly, SC NDB .....	Metta, SC FIX .....		9000
<b>§ 95.6001 Victor Routes—U.S.</b>			
<b>§ 95.6027 VOR Federal Airway V27</b>			
Is amended to read in part:			
*EUGEN, CA FIX .....	**TAILS, CA FIX .....		***6000
*7000—MRA.			
**7000—MRA.			
***3000—MOCA.			
<b>§ 95.6452 VOR Federal Airway V452</b>			
Is amended to read in part:			
Bachs, CA FIX .....	Halle, NV FIX .....		*14000
*10200—MOCA.			
Halle, NV FIX .....	Mustang, NV VORTAC .....		*11000
*9500—MOCA.			
<b>§ 95.6593 Alaska VOR Federal Airway V431</b>			
Is amended to delete:			
Sisters Island, AK VORTAC .....	*Lyric, AK FIX .....	**8000	
*8000—MRA.			
**5800—MOCA.			
**5800—GPS MEA.			
*Lyric, AK FIX .....	Biorka Island, AK VORTAC .....	5000	
*8000—MRA.			
<b>§ 95.6593 Alaska VOR Federal Airway V593</b>			
Is added to read:			
Sisters Island, AK VORTAC .....	*Lyric, AK FIX .....	**8000	
*8000—MRA.			
**5800—MOCA.			
**5800—GPS MEA.			
*Lyric, AK FIX .....	Biorka Island, AK VORTAC .....	5000	
*8000—MRA.			

[FR Doc. E6-14446 Filed 8-29-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9282]

RIN 1545-BE74

#### Dividends Paid Deduction for Stock Held in Employee Stock Ownership Plan

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under sections 162(k) and 404(k) of the Internal Revenue Code (Code) providing that a payment in redemption of employer securities held by an employee stock ownership plan (ESOP) is not deductible. These regulations generally affect administrators of, employers maintaining, participants in, and beneficiaries of ESOPs. In addition, they will affect corporations that make distributions in redemption of stock held in an ESOP.

**DATES:** *Effective Date:* These regulations are effective on August 30, 2006.

*Applicability Dates:* These regulations apply with respect to payments to reacquire stock that are made on or after and amounts paid or incurred on or after August 30, 2006. See §§ 1.162(k)-1(c) and 1.404(k)-3, Q&A-2.

**FOR FURTHER INFORMATION CONTACT:** John T. Ricotta at (202) 622-6060 with respect to section 404(k) or Jennifer D. Sledge at (202) 622-7750 with respect to section 162(k) (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains final regulations (26 CFR part 1) under sections 162(k) and 404(k) of the Code.

Section 162(k)(1) generally provides that no deduction otherwise allowable under chapter 1 of the Code is allowed for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or the stock of any related person (as defined in section 465(b)(3)(C)). The legislative history of section 162(k) states that the phrase "in connection with" is "intended to be construed broadly." H.R. Conf. Rep. No. 99-841, at 168 (1986).

Section 404(k)(1) provides a deduction for an applicable dividend paid in cash by a C corporation with

respect to applicable employer securities held by an ESOP, as defined in section 4975(e)(7). Section 404(k)(2) generally provides that the term *applicable dividend* means any dividend which, in accordance with the plan provisions, is either paid in cash to plan participants or beneficiaries or paid to the plan and distributed in cash to participants or beneficiaries not later than 90 days after the close of the plan year in which paid. An applicable dividend also includes a dividend which, at the election of participants or their beneficiaries, is payable as provided in the preceding sentence or paid to the plan and reinvested in qualifying employer securities. Finally, an applicable dividend also includes a dividend that is used to make payments on a loan described in section 404(a)(9), the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid. Under section 404(k)(4), the deduction is allowable in the taxable year of the corporation in which the dividend is paid or distributed to the participant or beneficiary.

Prior to 2002, section 404(k)(5)(A) provided that the Secretary may disallow the deduction under section 404(k) for any dividend if the Secretary determines that such dividend constitutes, in substance, an evasion of taxation. Section 662(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 38, 2001) amended section 404(k)(5)(A) to provide that the Secretary may disallow a deduction under section 404(k) for any dividend the Secretary determines constitutes, in substance, an avoidance or evasion of taxation.

Rev. Rul. 2001-6 (2001-1 CB 491) (see § 601.601(d)(2) of this chapter), states that distributions to participants of amounts paid by an employer to reacquire shares of its stock from the employer's ESOP (redemption proceeds) are made in connection with the reacquisition of the employer's stock and that section 162(k)(1) therefore bars the deduction under these circumstances regardless of whether the distributions to participants would otherwise be deductible under section 404(k). The revenue ruling also states that the treatment of redemption proceeds as "applicable dividends" under section 404(k) would produce such anomalous results that the section cannot reasonably be construed as encompassing such payments. The revenue ruling states that the application of section 404(k) to redemption proceeds not only would

allow employers to claim deductions for payments that do not represent true economic costs, but also, as further explained below, would vitiate important rights and protections for recipients of ESOP distributions. Finally, the ruling states that a deduction would be disallowed under section 404(k)(5)(A) because a deduction under these circumstances would constitute, in substance, an evasion of taxation.

These positions were reiterated in Notice 2002-2, Q&A-11 (2002-2 CB 285) (See § 601.601(d)(2) of this chapter), which states that, in accordance with Rev. Rul. 2001-6, payments in redemption of stock held by an ESOP that are used to make distributions to terminating ESOP participants constitute an evasion of taxation under section 404(k)(5)(A) and are not applicable dividends under section 404(k)(1). Moreover, the notice states that any deduction for such payments in redemption of stock is barred under section 162(k).

Notice 2002-2 (Q&A-7) also discusses the tax treatment of section 404(k) dividend distributions, stating that dividends paid in cash to a participant (rather than reinvested at the option of the participant under section 404(k)(2)(A)(iii)) are taxable without regard to the return of basis provisions under section 72, and are not subject to the consent requirements of section 411(a)(11) or the distribution restrictions of section 401(k)(2)(B). In addition, the Notice provides that dividends paid to participants under section 404(k) are not eligible rollover distributions under section 402(c), even if the dividends are distributed at the same time as amounts that do constitute an eligible rollover distribution (or are reported on Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) in accordance with Announcement 85-168).<sup>1</sup> See also § 1.402(c)-2, Q&A-4(e), under which dividends paid on employer securities under section 404(k) are not eligible rollover distributions under section 402(c).

In *Boise Cascade Corporation v. United States*, 329 F.3d 751 (9th Cir. 2003), the Court of Appeals for the Ninth Circuit held that payments made by the issuer of stock to redeem its stock held by its ESOP were deductible as dividends paid under section 404(k), and that the deduction was not

<sup>1</sup> Announcement 85-168 (1985-48 IRB 40) states that section 404(k) distributions are reportable as dividends on a recipient's tax return and that such distributions are fully taxable without regard to return of basis.