

Issued in Los Angeles, California, on June 28, 2002.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

**[Airspace Docket No. 02-ASO-8]**

#### Proposed Establishment of Class E Airspace; Poplarville, MS

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Poplarville, MS. A Visual Omni Range/Distance Measuring Equipment (VOR/DME)—A, Standard Instrument Approach Procedure (SIAP), has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Oreck Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

**DATES:** Comments must be received on or before August 22, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02-ASO-8, Manager, Airspace Branch, ASO-520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5627.

#### FOR FURTHER INFORMATION CONTACT:

Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

#### 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 those comments a self-addressed, stamped postcard on which the following statement is made:

“Comments to Airspace Docket No. 02-ASO-8.” The postcard will be date/time stamped and returned to the commenter. All communications received 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 the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Poplarville, MS. A VOR/DME—A SIAP has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Oreck Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in

Paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the 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. 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. 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).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

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

\* \* \* \* \*

#### ASO MS E5 Poplarville, MS [NEW]

Oreck Airport, MS

(Lat. 30°46'38" N, long. 89°43'30" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oreck Airport; excluding that airspace within the Bogalusa, LA, Class E airspace area.

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Issued in College Park, Georgia, on July 9, 2002.

**Walter R. Cochran,**  
Acting Manager, Air Traffic Division,  
Southern Region.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

**[REG-124256-02]**

**RIN 1545-BA82**

#### **Earnings Calculation for Returned or Recharacterized IRA Contributions**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations provide a new method to be used for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) of the Internal Revenue Code or recharacterized pursuant to section 408A(d)(6). The regulations will affect IRA owners and IRA trustees, custodians and issuers.

**DATES:** Written or electronic comments must be received by October 21, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-124256-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-124256-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

**FOR FURTHER INFORMATION CONTACT:** Cathy Vohs at 622-6090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 408(d)(4) provides that an IRA contribution will not be included in the

IRA owner's gross income when distributed as a returned contribution if: (1) It is received by the IRA owner on or before the day prescribed by law (including extensions) for filing the owner's Federal income tax return for the year of the contribution; (2) no deduction is allowed with respect to the contribution; and (3) the distribution is accompanied by the amount of net income attributable to the contribution.

Section 408A governs Roth IRAs and was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788). Section 408A(d)(6) provides that a contribution made to one type of IRA may be recharacterized as having been made to another type of IRA if: (1) The recharacterization transfer occurs on or before the date prescribed by law (including extensions) for filing the IRA owner's Federal income tax return for the year for which the contribution was made; (2) no deduction is allowed with respect to the contribution to the transferor IRA; and (3) the transfer is accompanied by any net income allocable to the contribution.

Section 1.408-4(c)(2)(ii) of the Income Tax Regulations prescribes the method (the old method) for calculating the amount of net income attributable to a contribution distributed pursuant to section 408(d)(4). The old method bases the calculation of the amount of net income attributable to a contribution on the income earned by the IRA during the period beginning on the first day of the taxable year in which the contribution is made and ending on the date of the distribution from the account. Under the old method, net income cannot be negative.

Section 1.408A-5, A-2(c), provides that if a contribution being recharacterized is in an IRA that at any time contained other contributions, the net income attributable to the contribution being recharacterized is calculated in the manner prescribed by § 1.408-4(c)(2)(ii) (the old method), except that net income can be negative. Section 1.408A-5, A-2(b), provides that if an IRA is established with a contribution and no other contributions or distributions are made, then the subsequent recharacterization transfer of the entire account balance of the IRA will satisfy the requirement that the transfer be accompanied by any net income allocable to the contribution.

In connection with issuing the regulations under section 408A

governing Roth IRAs, it became apparent that the old method produced anomalous results for contributions made late in the year. This is because, under the old method, account activity in the part of the year that precedes the date the contribution is made is taken into account in the calculation of the net income attributable to the contribution.

In response to this concern, the IRS issued Notice 2000-39 (2000-30 I.R.B. 132), which provided a new method for calculating net income that generally bases the calculation of the amount of net income attributable to a contribution on the actual earnings and losses of the IRA during the time it held the contribution. Under this new method, net income can be negative. Notice 2000-39 provided that until further guidance is issued, either the old method or the new method may be used to calculate net income. Notice 2000-39 also requested comments regarding the new method.

The Service received comments on the new method which were generally favorable. However, commentators provided a number of suggestions for improving the method, including: (1) Allowing a single computation period to be used in the case of multiple IRA contributions; (2) clarifying how transfers in or out of IRAs are treated under the new method; and (3) allowing net income to be determined on the basis of tracing specific assets, rather than dollar amounts. This last suggestion was focused primarily on the calculation of net income in the case of a recharacterization back to a traditional IRA following a conversion of an amount in a traditional IRA to a Roth IRA.

#### **Explanation of Provisions**

##### **New Method for Net Income Calculation Under Section 408(d)(4)**

These proposed regulations would incorporate, with certain modifications, the new method provided in Notice 2000-39. Under the proposed regulations, for purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution is determined by allocating to the contribution a pro-rata portion of the net income on the assets in the IRA (whether positive or negative) during the period the IRA held the contribution. This new method is represented by the following formula: