

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

*Paragraph 6005 Class E Airspace extending upward from 700 feet above the surface.*

\* \* \* \* \*

**ACE MO E5 Ozark, MO [Removed]**

Issued in Fort Worth, Texas, on May 11, 2011.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011-12113 Filed 5-18-11; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2011-0272; Airspace Docket No. 11-ASW-3]

**Revocation of Class E Airspace; Gruver Cluck Ranch Airport, TX**

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

**ACTION:** Final rule.

**SUMMARY:** This action removes Class E airspace at Gruver, Cluck Ranch Airport, TX. The airport has been abandoned, thereby eliminating the need for controlled airspace in the Gruver, Cluck Ranch Airport, TX, area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

**DATES:** Effective date: 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

**SUPPLEMENTARY INFORMATION:****The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class E airspace extending upward from 700 feet above the surface in the Gruver, Cluck Ranch Airport, TX

area. Abandonment of the former Cluck Ranch Airport and cancellation of all Standard Instrument Approach Procedures eliminates the need for controlled airspace. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Gruver, TX, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Cluck Ranch Airport, Gruver, TX.

**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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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]**

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*Paragraph 6005 Class E Airspace extending upward from 700 feet above the surface.*

\* \* \* \* \*

**ASW TX E5 Gruver Cluck Ranch Airport, TX**

Issued in Fort Worth, Texas, on May 11, 2011.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011-12121 Filed 5-18-11; 8:45 am]

**BILLING CODE 4910-13-P**

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 202**

[Release Nos. 33-9208; 34-64495; IC-29670]

**Amendment to Procedures for Holding Funds in Dormant Filing Fee Accounts**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is amending its procedures for holding funds in any filing fee account in which there has not been a deposit, withdrawal or other adjustment. The amendment extends the holding period from 180 days to three years, after which the Commission will initiate the return of funds to the account holder without any action by the account holder. As always, account holders may request a refund of such fees at any time.

**DATES:** *Effective Date:* May 19, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Johnson, (202) 551-4306, Chief Financial Officer, Office of Financial Management; Stephen Jung, (202) 551-5162, Assistant General Counsel, Office of the General Counsel; Michael Bloise,

(202) 551-5116, Senior Counsel, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is amending rule 3a (17 CFR 202.3a) of its Informal and Other Procedures under the Securities Act of 1933 ("Securities Act").<sup>1</sup>

### I. Discussion

The federal securities laws impose a number of fees on filings.<sup>2</sup> Pursuant to rule 3a of the Commission's Informal and Other Procedures (17 CFR 202.3a), filing fees paid under the Securities Act, Exchange Act, and Investment Company Act currently are transmitted to a Treasury designated lockbox depository, where they are held in filing fee accounts maintained by the Commission for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the Treasury designated lockbox depository in anticipation of paying a filing fee.<sup>3</sup> The Commission staff prepares account statements and sends these to account holders whenever a deposit, withdrawal, or other change occurs. The account holder, in turn, must maintain a current account address with the Commission to ensure timely access to such statements.<sup>4</sup> Pursuant to current 17 CFR 202.3a(e), the staff will initiate the return to the account holder of any funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account.

The 180-day limitation on the time in which the Commission may hold such funds could lead to considerable inefficiency and administrative burden for both account holders and Commission staff. Increasing the length of time in which the funds may remain inactive in an account will allow greater flexibility to filers who still intend to pay fees and do not want to receive a mandatory disbursement only to return it to the Commission at the time a fee is due. This concern is particularly acute for those filers whose payment obligations involve fees that are due on a periodic basis in excess of 180 days, such as investment companies who

submit approximately 5,800 Form 24F-2 filings annually.<sup>5</sup> And, while the amendment will create more flexibility for filers who wish to leave funds in their accounts, the right of an account holder to receive a disbursement of excess funds from its account any time upon request to the Commission will continue unchanged.

The amendment also will harmonize the Commission's account-clearing procedure with Securities Act Rule 415(a)(5), which allows issuers eligible to conduct primary shelf offerings to sell securities relying on an effective registration statement for up to three years before they are required to file a new one.<sup>6</sup> This is particularly important in connection with automatic shelf registration statements, which allow issuers to register an indeterminate amount of securities when they initially file and defer payment of required fees until they later determine the amount of securities they wish to sell. As a result of this "pay-as-you-go" feature, issuers with automatic shelf registration statements may be required to pay additional fees throughout the life of the registration statement. Adoption of a three-year inactivity period before account balances are returned will ensure that funds paid at the time a shelf registration statement is initially filed will remain available to issuers in their lockbox accounts for the life of the registration statement. This could also benefit issuers by allowing them to review the unused balances available in their lockbox accounts no more frequently than they are required to prepare and file new shelf registration statements. Issuers that review their capital-raising plans in connection with each required renewal of a shelf registration statement would be able to adjust the amounts on deposit in their lockbox accounts to match their future offering plans. Any resulting additional deposits or withdrawal requests would result in account activity, which would obviate the need for a refund until the expiration of an additional three-year time period. As a consequence, a three-year time period could help reduce the number of refund payments made to issuers who would prefer to have funds remain in their lockboxes to cover anticipated future filing needs. And, as noted above, the right of an issuer to receive a disbursement of excess funds from its account at any time upon

request to the Commission will continue unchanged.

### II. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that this amendment to its rules relates solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunity for public participation are not applicable.<sup>7</sup> For the same reasons, and because this amendment does not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.<sup>8</sup> In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.<sup>9</sup> Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.<sup>10</sup>

### III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The rule amendment the Commission is adopting today amends the Commission's rules to extend the period in which the Commission shall hold funds in a dormant account prior to issuing an automatic refund, so as to increase the efficiency of the procedure and harmonize the Commission's account clearing procedures with Securities Act Rule 415(a)(5). The right of an account holder to receive a full refund of fees held by the Commission in a dormant account, at any time upon request, remains unchanged. The Commission does not believe that the rule amendment will impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

### IV. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendment that the Commission is adopting today will have any impact on competition.

<sup>1</sup> 15 U.S.C. 77a.

<sup>2</sup> See, e.g., section 6(b) of the Securities Act, sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 ("Exchange Act"), and section 24(f) of the Investment Company Act of 1940 ("Investment Company Act").

<sup>3</sup> 17 CFR 202.3a(d).

<sup>4</sup> *Id.*

<sup>5</sup> Form 24F-2 is the annual notice of securities sold by certain investment companies pursuant to rule 24F-2 under the Investment Company Act of 1940 that accompanies the payment of registration fees under the Securities Act of 1933.

<sup>6</sup> 17 CFR 230.415.

<sup>7</sup> 5 U.S.C. 553(b).

<sup>8</sup> 5 U.S.C. 804.

<sup>9</sup> 5 U.S.C. 601-12.

<sup>10</sup> 44 U.S.C. 3501-20.

## V. Statutory Basis and Text of Final Rule Amendments

The Commission is adopting amendments pursuant to sections 6(b) and 19 of the Securities Act, sections 13(e), 14(g), 23, and 31 of the Exchange Act, and sections 24(f) and 38 of the Investment Company Act.

### List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

In accordance with the foregoing, 17 CFR, Chapter II of the Code of Federal Regulations is amended as follows:

### PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for Part 202 continues to read in part as follows:

**Authority:** 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, and 7201 *et seq.*, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 202.3a, paragraph (e) is amended by removing the phrase “180 calendar days”, and adding in its place the phrase “three years”.

By the Commission.

Dated: May 13, 2011.

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–12280 Filed 5–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9526]

RIN 1545–BG96

### Treatment of Property Used To Acquire Parent Stock or Securities in Certain Triangular Reorganizations Involving Foreign Corporations

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 367 of the Internal Revenue Code (Code) relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving foreign corporations. The regulations finalize proposed regulations and withdraw temporary regulations published on May 27, 2008 (TD 9400). The regulations affect

corporations that engage in certain triangular reorganizations involving one or more foreign corporations.

**DATES:** *Effective Date:* These regulations are effective May 19, 2011.

*Applicability Dates:* For dates of applicability, see §§ 1.367(a)–3(g)(1)(viii) and 1.367(b)–10(e).

**FOR FURTHER INFORMATION CONTACT:** Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 27, 2008, the IRS and Treasury Department published temporary and proposed regulations under section 367(b) that apply to certain triangular reorganizations in which a subsidiary (S) purchases, in connection with the reorganization, stock of its parent corporation (P) in exchange for property, and exchanges the P stock for the stock or property of a target corporation (T), but only if P or S (or both) is a foreign corporation (the temporary regulations or proposed regulations, as applicable, and collectively, the 2008 regulations). 73 FR 30301 (TD 9400, 2008–24 IRB 1139). Because no requests to speak were received, no public hearing was held; however, comments were received. After consideration of the comments received, the IRS and Treasury Department adopt the proposed regulations as final regulations with the modifications described herein. Although the 2008 regulations were numbered under § 1.367(b)–14, the final regulations are renumbered under § 1.367(b)–10. The temporary regulations are withdrawn.

#### Summary of Comments and Explanation of Revisions

##### A. Scope of Regulations and Priority Rule

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation. As a result, the general rule is the United States person recognizes gain (if any) on the transfer of such property, unless an exception to section 367(a)(1) applies to the transfer. Furthermore, section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign

corporation shall be considered to be a corporation except to the extent provided in regulations. Thus, section 367(b)(1) will not apply to an exchange if gain is recognized on that exchange under section 367(a)(1).

Section 367(a)(1) (and the regulations under that section) and the 2008 regulations could each potentially apply to certain triangular reorganizations. For example, section 367(a)(1) and the 2008 regulations could each potentially apply to a triangular reorganization described in section 368(a)(1)(B) if S acquires P stock for property, each of P, S, and T are foreign corporations, the T stock is held by a U.S. person, and the U.S. person realizes gain on the exchange of the T stock. See § 1.367(a)–3(d)(1)(iii)(A) (providing that there is an indirect transfer by the U.S. person of the T stock to S).

The 2008 regulations include a priority rule that applies to certain transactions described in section 367(a)(1) and the 2008 regulations. The priority rule generally provides that if the amount of gain in the T stock that would otherwise be recognized under section 367(a)(1) (absent an exception) is less than the adjustment treated as a dividend under the 2008 regulations, then the 2008 regulations, and not section 367(a)(1), apply to the triangular reorganization.

One commentator noted that the priority rule applies simply based on comparing the amount of gain that would be recognized under section 367(a)(1) with the amount of the dividend that would result under the 2008 regulations, without regard to the amount of resulting U.S. tax. The commentator stated that in some cases it may be more appropriate for the priority rule to take into account the amount of resulting U.S. tax. The commentator cited, as an example, a case where P is foreign, S and T are domestic, T is owned by a U.S. person, and any dividend received by P from S under the 2008 regulations would not be subject to U.S. tax as a result of an applicable treaty. The commentator noted that if the dividend in such a case exceeds the amount of gain that would otherwise be recognized under section 367(a)(1), it may not be appropriate for the 2008 regulations to apply in lieu of section 367(a)(1) and § 1.367(a)–3(c).

The IRS and Treasury Department recognize that in some cases it may be appropriate for the priority rule to take into account the amount of resulting U.S. tax. However, the IRS and Treasury Department do not believe it would be administrable to take into account the resulting U.S. tax in all cases, because this could require consideration of