SUPPLEMENTARY INFORMATION:

History

On January 23, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Brunswick, GA (61 FR 1724). This action would provide adequate Class E airspace for IFR operations at the Jekyll Island Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Brunswick, GA, to accommodate a VOR or GPS–A SIAP and for IFR operations at the Jekyll Island Airport.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ASO GA E5 Brunswick, GA [Revised]

Brunswick/Malcolm-McKinnon Airport, GA
(lat. 31°09′06″ N, long. 81°23′29″ W)
Brunswick/Glynco Jetport Airport
(lat. 31°15′33″ N, long. 81°27′59″ W)
Jekyll Island Airport
(lat. 31°04′28″ N, long. 81°25′40″ W)

That airspace extending upward from 700 feet above the surface within 7-mile radius of the Malcolm-McKinnon Airport and within a 7-mile radius of the Glynco Jetport Airport and within a 6.3-mile radius of the Jekyll Island Airport and within 2.4 miles each side of the Brunswick VOR 217° radial, extending from the 6.3-mile radius to 7 miles southwest of the VOR.

* * * * *

Issued in College Park, Georgia, on March 15, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–7167 Filed 3–22–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 96]

Staff Accounting Bulletin No. 96

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this staff accounting bulletin express certain views of the staff regarding treasury stock acquisitions following a business combination accounted for as a pooling-of-interests.

EFFECTIVE DATE: March 19, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Tokar or Brian Heckler, Office of the Chief Accountant (202–942–4400), or Kurt Hohl, Division of Corporation Finance (202–942–2960), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 19, 1996.

Margaret H. McFarland,

Deputy Secretary.

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 96 to the table found in Subpart B.

PART 211—[AMENDED]

Staff Accounting Bulletin No. 96

The staff hereby adds Section F to Topic 2 of the Staff Accounting Bulletin Series. Topic 2–F provides guidance regarding the effect of treasury stock acquisitions following consummation of a business combination accounted for as a pooling-of-interests.

Topic 2–F: Treasury Stock Acquisitions Following Consummation of a Business Combination Accounted for as a Pooling-of-Interests

Facts: An issuer, concurrently with the development of a plan for a business combination, formulates a plan to reacquire treasury stock after the consummation date of the combination. The treasury stock will not be reacquired directly from former shareholders of the combining company.

Question 1: Does the staff believe that an intention to reacquire treasury stock precludes accounting for a business combination as a pooling-of-interests?

Interpretive Response: Yes, except in certain limited circumstances. The staff believes that an intention to reacquire treasury stock is part of the plan of combination (a ''planned transaction'') if the intention is formulated concurrently with the development of the plan of combination. However, the staff does not believe that planned transactions that merely defer actions that would be permitted prior to consummation preclude the application of pooling-of-interests accounting to the combination. Accordingly, the staff has not objected to planned transactions involving reacquisitions of either untainted treasury stock (as discussed in Accounting Series Release Numbers 146 and 146–A) or tainted treasury stock up to the limits permitted under paragraph

47 of APB Opinion 16, *Business Combinations.*

Paragraph 48 of APB Opinion 16 provides that some planned transactions preclude accounting for a combination as a pooling-of-interests. This prohibition extends not only to transactions explicitly agreed to, but also to intended transactions.[1] Specifically, paragraph 48(a) of APB Opinion 16 identifies the intention to reacquire the common stock issued to effect the combination as a planned transaction that is inconsistent with a pooling-of-interests. Paragraph 48(a) of APB Opinion 16 does not specify a period after which an otherwise prohibited reacquisition of treasury stock is permitted. However, based on related planned transaction guidance in paragraph 48(c) of APB Opinion 16, which precludes application of pooling-of-interests accounting if a company plans to make significant dispositions of assets within two years of consummation, the staff has not required a period longer than two years for other prohibited planned transactions.

In applying the 90% test of paragraph 47 of APB Opinion 16 at the consummation date, the staff believes that, unless the shares to be reacquired would be untainted, the maximum number of shares that may be reacquired within two years of consummation of the combination pursuant to any planned transaction should be aggregated with other ''paragraph 47 exceptions.'' If the total paragraph 47 exceptions exceed 10% of any combining company's outstanding shares, the staff believes that application of pooling-of-interests accounting to the combination would not be appropriate.[2]

Question 2: Does the staff believe that an intention to reacquire treasury stock should be considered part of the plan of combination if the intention is not announced until after consummation of the business combination?

Interpretive Response: Yes. The staff believes that the formulation of an intention to reacquire treasury stock, and not the announcement of that intention, is the action that precludes application of pooling-of-interests accounting. Further, it is difficult to conclude that an action that occurs shortly after a business combination is consummated is not evidence of an intention formulated concurrently with development of the plan of combination. Accordingly, the staff considers whether a registrant's actions, both prior to and following consummation of a business combination, provide evidence of an intention to reacquire shares after the combination.[3]

In applying this interpretive guidance, the staff presumes that reacquisitions of treasury stock within six months following consummation of a business combination are planned transactions that are part of the combination plan. Other actions that may occur less than six months after consummation of a business combination provide persuasive evidence of a prior intention that was part of the combination plan. For example, the staff believes that the announcement of an intention to reacquire shares made within six months following consummation of a business combination provides persuasive evidence of an intention that was part of the combination plan.

The staff generally has not questioned the use of pooling-of-interests accounting as a result of reacquisitions of treasury stock made more than six months after the combination is consummated in circumstances in which there is no evidence that the reacquisitions of treasury stock were planned transactions.

Question 3: Prior to initiation of a business combination, a company announced a plan to reacquire tainted treasury stock, but suspended reacquisitions pursuant to that plan prior to consummation of the combination. Does the staff believe that an intention to resume reacquisitions of treasury stock after consummation of the combination pursuant to a pre-existing plan can be distinguished from other intentions to reacquire treasury stock after the combination?

Interpretive Response: No. The staff believes that an intention to resume reacquiring tainted treasury stock pursuant to a pre-existing plan cannot be distinguished from an intention to reacquire treasury stock formulated concurrently with development of the plan of combination. As the Commission commented in ASR 146, it is difficult to separate reasons for reacquiring treasury stock from intentions to reacquire shares that are part of the plan of combination, even if the reason for the acquisition of such shares is reissuance for recurring distributions.[4] Unless treasury stock reacquired will be untainted treasury stock, the assertion that those shares were acquired for reasons other than the business combination is not sufficient to separate the intention to resume reacquiring treasury stock from other planned transactions to reacquire shares issued to effect the combination.[5]

Question 4: Paragraph 48(a) of APB Opinion 16 prohibits application of pooling-of-interests accounting when there is an intention to reacquire, either directly or indirectly, the common stock issued to effect the combination. In the opinion of the staff, does an intention to reacquire treasury stock from parties other than former shareholders of the combining company after consummation of a business combination represent an intention to reacquire shares issued to effect the combination?

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[1] Paragraph 48 of APB Opinion 16, captioned ''*Absence of planned transactions,*'' states, ''Some transactions after a combination is consummated are inconsistent with the combining of entire existing interests of common stockholders. Including those transactions in the negotiations and terms of the combination, either explicitly or by intent, counteracts the effect of combining stockholder interests'' [emphasis added].

[2] *See* the computational guidance provided by the FASB's Emerging Issues Task Force, in its discussion of Issue 87–16, regarding how tainted treasury shares (net of shares ''cured'' through reissuance) should be aggregated with other ''paragraph 47 exceptions'' (e.g., dissenters' shares) when testing for satisfaction of the requirements of paragraph 47 of APB Opinion 16. The 10% limitation described above normally is computed by reference to the number of shares issued to effect the combination. In some circumstances, such as those where the smaller of the combining companies is the issuer, the 10% limitation might be further constrained.

Additionally, while an issuer may cure tainted treasury stock acquired prior to consummation, issuing shares to effect the pooling would not cure tainted treasury stock.

[3] Actions that the staff has determined provide evidence of an intention to reacquire shares after consummation of a combination include use of projections or forecasts reflecting post-consummation acquisitions of treasury stock or decisions to reacquire treasury stock where those decisions were made by management having the requisite authority to commit the enterprise to such a plan. Any statement made prior to consummation of a business combination that a company intends to reacquire treasury stock after consummation of that combination also is evidence of a planned transaction. These examples are illustrative only and do not include all instances in which the staff may conclude that a company has formulated an intention to reacquire treasury stock.

[4] ASR 146 comments that, ''in determining the purpose of treasury stock acquisitions, it is ordinarily appropriate to focus on the intended subsequent distribution of common shares rather than on the business reasons for acquiring treasury shares [emphasis added]. For example, shares may be reacquired because management believes the company is overcapitalized or considers that ''the price is right,'' but such reasons do not overcome the presumption that they were acquired in contemplation of effecting business combinations to be accounted for as poolings of interests.''

[5] ASR 146 states that ''the mere assertion that common shares are acquired for such purposes [as stock option or purchase plans or stock dividends] even where the assertion is formalized by action of the board of directors reserving the treasury shares, does not provide persuasive evidence [that the acquisition of treasury stock is unrelated to a business combination]. * * * Accordingly, the Commission concludes that treasury shares acquired in the restricted period for recurring distributions should be considered ''tainted'' unless they are acquired in a [seasoned] systematic pattern of reacquisition * * *''

Interpretive Response: Yes. The staff believes that the identity of the seller of the treasury stock is not the deciding factor in determining whether the issuer has reacquired stock issued to effect the combination. For example, the staff believes that a reacquisition of treasury stock in an open market transaction results in an indirect reacquisition of shares issued to effect the combination.[6]

[FR Doc. 96–7071 Filed 3–22–96; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

RIN 2125–AD31

Utilities; Technical Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: This document amends the FHWA's regulation on accommodation of utilities to remove the reference to a paragraph citation that no longer exists. On July 5, 1995, at 60 FR 34846, 34850, in FR Doc. 95–16403, the FHWA removed the paragraph designations from the definitions in the utilities regulation. Inadvertently, one of the paragraph designations within the text of the definition of *private lines* was not removed. This document corrects the definition by removing such reference and revising the language accordingly.

EFFECTIVE DATE: March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office of Engineering, (202) 366–4104; or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads.

In consideration of the foregoing, the FHWA hereby amends title 23, Code of Federal Regulations, part 645, subpart B as set forth below:

[6] *See*, for example, paragraph 47(b) of APB Opinion 16, which notes that the choice of an issuer in a combination is a matter of convenience. This interpretive response also recognizes the fungible nature of common stock. The Commission has commented on the fungibility of shares of common stock when addressing cures of tainted treasury stock in ASR 146, noting that there is no substantive difference between treasury stock and newly-issued stock.

PART 645—UTILITIES

1. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

2. In § 645.207, the definition of *private lines* is revised to read as follows:

§ 645.207 Definitions.

* * * * *

Private lines—privately owned facilities which convey or transmit the commodities outlined in the definition of *utility facility* of this section, but devoted exclusively to private use.

* * * * *

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 15, 1996.

Edward V.A. Kussy,

Acting Chief Counsel.

[FR Doc. 96–7147 Filed 3–22–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010–AC14

Deepwater Royalty Relief for New Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Interim rule.

SUMMARY: The Outer Continental Shelf Deep Water Royalty Relief Act (Act) authorizes the Secretary of the Interior (Secretary) to offer Outer Continental Shelf tracts for lease with suspension of royalties for a volume, value, or period of production. The Act requires the Secretary to use this bidding system on tracts offered for lease in water depths of 200 meters or more in parts of the Gulf of Mexico through November 28, 2000. The Minerals Management Service (MMS) intends to hold a lease sale in April 1996. This interim rule specifies the royalty suspension terms under which the Secretary will make tracts available for that sale.

DATES: *Effective Date:* This interim rule is effective April 24, 1996.

Comments: We will consider all comments we receive by April 24, 1996. We will begin review of comments at that time and may not fully consider comments we receive after April 24, 1996.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 22070–4817, Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Walter Cruickshank, Offshore Minerals Analysis Division, telephone (202) 208–3822.

SUPPLEMENTARY INFORMATION:

I. Background on the New Legislation

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Act. The Act contains four major provisions concerning new and existing leases. New leases are tracts leased during a sale held after the Act's enactment on November 28, 1995. Existing leases are defined as all other leases.

First, section 302 of the Act clarifies the Secretary's pre-existing authority in 43 U.S.C. 1337(a)(3) to reduce royalty rates on existing leases in order to promote development, increase production, and encourage production of marginal resources on producing or non-producing leases. This provision applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes west longitude.

Second, section 302 also provides that ''new production'' from existing leases in water depths of 200 meters or greater qualifies for royalty suspensions if the Secretary determines that the new production would not be economic in the absence of royalty relief. The Secretary must then determine the appropriate royalty suspension volume on a case-by-case basis, subject to specified minimums for leases not in production prior to the date of enactment. This provision also applies only to leases in the Gulf of Mexico west of 87 degrees, 30 minutes west longitude.

Third, section 303 establishes a new bidding system that allows the Secretary to offer tracts with royalty suspensions for a period, volume, or value the Secretary determines. On February 2, 1996, we published a final rule modifying the regulations governing the bidding systems we use to offer OCS tracts for lease (61 FR 3800). New § 260.110(a)(7) addresses the new bidding system mandated by section 303 of the Act.

Fourth, section 304 provides that all tracts offered within 5 years of the date of enactment in water depths of 200 meters or greater in the Gulf of Mexico west of 87 degrees, 30 minutes west longitude, must be offered under the new bidding system. The following