as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile radius to a 7.8-mile radius of Lexington Municipal Airport and brings the legal description of the Lexington, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in the 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 both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of the comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19575/Airspace Docket No. 04–ACE–65.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, 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

■ Accordingly, 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; 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 7400.9M, 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.

* * * * *

ACE MO E5 Lexington, MO

Lexington Municipal Airport, MO
(Lat. 39°12′35″ N., long. 93°55′41″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Lexington Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 3, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–25416 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Forms, Securities Exchange Act of 1934

CFR Correction

■ In Title 17 of the Code of Federal Regulations, Part 240 to End, revised as of April 1, 2004, on page 589, remove and reserve § 249.636.

[FR Doc. 04–55519 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

Passports

CFR Correction

■ In Title 22 of the Code of Federal Regulations, Parts 1 to 299, revised as of April 1, 2004, on page 259, § 51.27 is corrected by adding paragraphs (d)(1)(i)(A) through (D) and (d)(1)(ii) to read as follows:

§ 51.27 Minors.

* * * * *

(d) * * *

(1)(i) * * *

(A) Grants sole custody to the objecting parent; or,

(B) Establishes joint legal cutody; or,

(C) Prohibits the child's travel without the permission of both parents or the court; or,

(D) Requires the permission of both parents or the court for important decisions, unless permission is granted in writing as provided therein.

(ii) For passport issuance purposes, a court order providing for joint legal custody will be interpreted as requiring the permission of both parents. The Department will consider a court of competent jurisdiction to be a U.S. state court or a foreign court located in the child's home state or place of habitual residence. Notwithstanding the existence of any such court order, a passport may be issued when compelling humanitarian or emergency reasons relating to the welfare of the child exist.

* * * * *

[FR Doc. 04–55520 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9159]

RIN 1545–BD50

Payments Made by Reason of a Salary Reduction Agreement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains a temporary regulation that defines the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D) of the Internal Revenue Code (Code). The temporary regulation provides guidance to employers (public educational institutions and section 501(c)(3) organizations) purchasing annuity contracts described in section 403(b) on behalf of their employees. The text of the temporary regulation also serves as the text of the proposed regulation 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:* This regulation is effective on November 16, 2004.

Applicability Date: For dates of applicability, *see* § 31.3121(a)(5)–2T(b).

FOR FURTHER INFORMATION CONTACT: Neil D. Shepherd, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This temporary regulation (REG–155608–02) amends the Employment Tax Regulations (26 CFR part 31) by providing guidance relating to section 3121(a)(5)(D). The Federal Insurance Contributions Act (FICA) imposes taxes on employees and employers equal to a percentage of the wages received with respect to employment. Code section 3121(a) defines wages for FICA tax purposes as all remuneration for employment unless otherwise excepted. Code section 3121(a)(5)(D), added by the Social Security Amendments of 1983 (Public Law 98–21 (97 Stat. 65)), generally excepts from wages payments made by an employer for the purchase of an annuity contract described in section 403(b). In a codification of long-standing administrative practice, however, section 3121(a)(5)(D) expressly excludes from the exception payments made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise). *See* Rev. Rul. 65–208, 1965–2 C.B. 383, and S. Rep. No. 98–23, at 41, 98th Cong., 1st Sess. (1983). This temporary regulation defines the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D).

Explanation of Provisions

The FICA taxation of payments made by an employer for the purchase of annuity contracts described in section 403(b) has been shaped by a congressional concern for the social security revenue base and for employees' social security benefits. In the context of contributions for the purchase of such annuity contracts, Congress has interpreted the term ''wages'' for FICA tax purposes more broadly than the term ''gross income'' for income tax purposes. *See* S. Rep. No. 98–23, at 39, 98th Cong., 1st Sess. (1983) relating to the Social Security Amendments of 1983 (Public Law 98–21 (97 Stat. 65)).

An amount is generally includible in wages for FICA tax purposes at the time it is actually or constructively paid by the employer and received by the employee. Additionally, wages generally include an amount that an employer contributes to a plan only if the employee agrees to reduce his or her compensation. For income tax purposes, however, section 403(b) provides an exclusion from gross income for contributions made by an employer, including contributions made pursuant to a cash or deferred election or other salary reduction agreement. *See* section 1450(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188 (110 Stat. 1755)). Conversely, for FICA tax purposes, wages include contributions made by an employer to a section 403(b) contract pursuant to a cash or deferred election or other salary reduction agreement. *See* S. Rep. No. 98–23, at 40–41, 98th Cong., 1st Sess. (1983). Thus, while section 403(b) excludes from gross income contributions made pursuant to certain cash or deferred elections, such contributions are made by reason of a salary reduction agreement under section 3121(a)(5)(D) and are included in wages for FICA tax purposes. Consequently, this temporary regulation explicitly provides that the term ''salary reduction agreement'' includes a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)–1(a)(3) of the Income Tax Regulations.

Pursuant to regulation § 1.401(k)–1(a)(3)(iv) of this chapter, a cash or deferred election does not include a one-time irrevocable election made upon an employee's commencement of employment with the employer. Similarly, pursuant to section 402(g)(3), while the term ''elective deferrals'' generally includes any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), an employer contribution made pursuant to a one-time irrevocable election is not treated as an elective deferral. *See* H.R. Rep. No. 100–795, at 145, 100th Cong., 2d Sess. (1988) and S. Rep. No. 100–445, at 151, 100th Cong., 2d Sess. (1988) relating to the amendment of section 402(g)(3) by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647 (102 Stat. 3342)). Notwithstanding that section 403(b) contributions made pursuant to a one-time irrevocable election are excluded from cash or deferred elections under section 401(k) and from elective deferrals under section 402(g)(3), such contributions are made pursuant to a salary reduction agreement. If the employee had not made a one-time irrevocable election, the employer's cash payment to the employee would be includible in the employee's gross income and in wages for FICA tax purposes. Consequently, this temporary regulation explicitly provides that the term ''salary reduction agreement'' includes a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of