

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register Document 88-835**, as published in the **Federal Register** on January 19, 1988, (53 FR 1336) is corrected as follows:

PART 71—[AMENDED]**§ 71.181 [Amended]****Missoula, Montana (Revised)**

That airspace extending upward 700 feet above the surface within a 23.5 mile radius of the Missoula VORTAC (lat. 46°54'29" N, long. 114°04'58" W) extending from the Missoula VORTAC 190° radial clockwise to the 209° radial; within 9.5 miles southwest and 5.5 miles northwest of the Missoula VORTAC 312° radial extending from the VORTAC to 38 miles northwest of the VORTAC; within 3 miles each side of the Missoula VORTAC 172° radial extending from the VORTAC to 19.5 miles southwest; and the airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°30'00" N, long. 115°15'00" W to lat. 47°30'00" N, long. 112°40'00" W to lat. 46°53'00" N, long. 112°19'00" W to lat. 46°44'00" N, long. 112°19'00" W to lat. 46°44'00" N, long. 112°54'00" W to lat. 46°33'00" N, long. 113°05'00" W to lat. 46°00'00" N, long. 113°05'00" W to lat. 46°00'00" N, long. 115°15'00" W to point of beginning and excluding the portion within the Great Falls, Montana; Helena, Montana; and Coeur d'Alene, Montana, 1,200 foot transition areas.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on March 29, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-7885 Filed 4-8-88; 8:45 am]

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14 CFR Part 71**[Airspace Docket No. 87-ANM-7]****Alteration of Transition Area, Rock Springs, WY; Correction**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects Federal Register Document 87-19991 due to several incorrect VORTAC radials which were published in the final rule description of the Rock Springs

transition area effective November 19, 1987.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-7, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:**History**

Federal Register Document 87-19993, published on September 1, 1987, Volume 52, Page 32915 altered the Rock Springs 1200-foot transition area to provide additional controlled airspace east of Rock Springs, Wyoming. The description of the transition area contained several incorrect VORTAC radials.

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 "major rule" under Executive Order 12291; (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

Aviation safety, transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register Document 87-19991**, as published in the **Federal Register** on September 1, 1987 (52 FR 32915) is corrected as follows:

PART 71—[AMENDED]**§ 71.181 [Amended]****Rock Springs, Wyoming, Transition Area (Amended)**

Change 1200-foot transition area to read as follows: * * * to 19 miles east of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the Rock Springs VORTAC, including that airspace bounded by 4.5 miles south of the Rock Springs 129° radial between 23 miles and 43.5 miles, and 4.5 miles east of the Cherokee VORTAC 228° radial between the VORTAC and 56.5 miles, and 4.5 miles northwest of the Rock Springs 081° radial between 23 miles and the Cherokee VORTAC, excluding that airspace

included in the Rawlins, Wyoming, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on March 28, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88-7884 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 230 and 240**

[Release No. 33-6763, 34-25546; File No. S7-31-86]

Prospectus Delivery for Aftermarket Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") has adopted an amendment to Rule 174 governing a dealer's obligation to deliver prospectuses after a registered offering during the 40 or 90 day period specified in section 4(3) of the Securities Act of 1933. This amendment reduces the aftermarket prospectus delivery period with respect to offerings by issuers that were not reporting companies before filing their registration statements to 25 calendar days after the offering of securities that are either listed on a national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system of a registered securities association (e.g., NASDAQ, the quotation system sponsored and governed by the National Association of Securities Dealers, Inc.). In addition, the Commission has adopted a corresponding amendment to Rule 15c2-8 under the Securities Exchange Act of 1934.

EFFECTIVE DATE: These amendments are effective for public offerings commencing after April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Larisa E. Dobriansky (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. After the effective date, contact Anne Krauskopf, (202) 272-2573, Office of the Chief Counsel, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of revisions to Rule 174¹ under the Securities Act of 1933 ("Securities Act")² and a corresponding amendment to Rule 15c2-8³ under the Securities Exchange Act of 1934 ("Exchange Act").⁴

The Commission reminds all securities professionals that the prospectus delivery requirement of section 4(3),⁵ as modified by Rule 174, applies to all dealers effecting transactions in the registered securities, whether or not they participate in the distribution of the securities, and that failure to comply with those requirements, as amended today, may result in appropriate Commission enforcement action.

I. Discussion

A. Alternative Proposals to Reduce Prospectus Delivery Period

In December, 1986, the Commission proposed alternative amendments to Rule 174⁶ to reduce or, in some cases, eliminate the 40 or 90 day prospectus delivery period specified in section 4(3) of the Securities Act ("prospectus delivery period"). During the applicable period,⁷ dealers⁸ must deliver a Section 10(a)⁹ prospectus (final prospectus) in connection with most secondary market transactions¹⁰ in securities that are the subject of a registration statement filed under the Securities Act. The aftermarket prospectus delivery requirement applies to all dealers effecting transactions in the registered securities, whether or not they participate in the distribution of the securities. That requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

The prospectus delivery period and associated "quiet period"¹¹ run from the later of the effective date of the registration statement or the first date on which the securities were bona fide offered to the public. Rule 174 provides, with respect to either the 40 or 90 day period, that a prospectus need not be delivered for aftermarket transactions in the securities of an issuer that was a reporting company under the Exchange Act prior to filing the Securities Act registration statement covering such securities.

Two approaches to amending Rule 174 were proposed. Both would have provided relief, under certain circumstances, for transactions in the securities of issuers not subject to the reporting requirements of section 13 or 15(d)¹² of the Exchange Act immediately prior to filing their registration statements ("non-reporting companies"). In this regard, comment was solicited on whether developments that have occurred in the trading markets justify a reduction in the prospectus delivery period for offerings by non-reporting companies ("initial public offerings") of securities meeting the conditions of either proposal. In particular, comment was requested on whether current trading requirements, market processes, and issuer standards assure the availability and timely dissemination of material information and minimize the potential for market manipulation and other hot issue abuses. The Commission asked commentators to furnish empirical data supporting their views.

Proposal I would have reduced the prospectus delivery period to 25 days following a public offering for transactions in listed equity¹³ or NASDAQ¹⁴ securities for which real-time transaction reporting¹⁵ is required

by an effective transaction reporting plan¹⁶ ("transaction-reported securities"). Exchange Act Rule 11Aa2-1 designates for trading in the National Market System ("NMS") any transaction-reported security.¹⁷

In addition to reducing the prospectus delivery period for transaction-reported securities, Proposal I would have eliminated the prospectus delivery requirement for aftermarket transactions in transaction-reported common stock sold in a firm commitment underwriting if the registrant satisfied criteria relating to the company's size, public float and operating history. Those transactions would have been afforded the same relief currently provided under Rule 174 to transactions in securities of reporting companies.

The alternative rule proposed for comment, Proposal II, was based on the recommendations contained in a rulemaking petition filed by the Securities Industry Association ("SIA").¹⁸ It would have reduced the prospectus delivery period to 25 days for dealers trading in securities listed on a national securities exchange or authorized for inclusion in the NASDAQ system, whether or not subject to transaction reporting.

B. Comments on Proposed Amendments

Of the seven commentators on the rule proposals, six endorsed the Commission's objective of further reducing the regulatory burdens imposed upon dealers under section 4(3) of the Securities Act without compromising investor protection.¹⁹ However, none of the commentators supported the elimination of the delivery period under Proposal I. Doubts were expressed about whether, immediately after completion of an initial public offering, information concerning the issuer will have been disseminated as

¹ 17 CFR 230.174.

² 15 U.S.C. 77a-77aa (1982).

³ 17 CFR 240.15c2-8.

⁴ 15 U.S.C. 78a-78kk (1982).

⁵ 15 U.S.C. 77d(3).

⁶ Release No. 33-6662 (December 18, 1986) [51 FR 46874] ("Proposing Release").

⁷ If securities of the issuer have not been sold previously pursuant to an earlier effective registration statement, the applicable period specified in section 4(3)(B) [15 U.S.C. 77d(3)(B)] is 90 days; otherwise, the designated period is 40 days. In both cases, the Securities Act authorizes the Commission to specify a shorter period.

⁸ Under section 2(12) of the Securities Act [15 U.S.C. 77b(12)], and as used throughout this Release, the term "dealer" includes a "broker."

⁹ 15 U.S.C. 77j(a).

¹⁰ Section 4(4) of the Securities Act (15 U.S.C. 77d(4)) exempts transactions executed by brokers on exchanges or in the over-the-counter markets pursuant to unsolicited customers' orders.

¹¹ Sections 5(b)(1) [15 U.S.C. 77e(b)(1)] and 2(10) [15 U.S.C. 77b(10)] of the Securities Act, taken together, require that, during the prospectus delivery period, a prospectus meeting the requirements of section 10(a) of the Act accompany or precede any communication that would be deemed to be a prospectus and does not itself meet the section 10(a) requirements. As a result of such restrictions, the prospectus delivery period frequently is referred to as a "quiet period."

¹² 15 U.S.C. 78m 78o(d).

¹³ The term "listed equity security" means any equity security which is listed on a national securities exchange.

¹⁴ The term "NASDAQ security" means an equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.

¹⁵ Real-time transaction reporting is the disseminating, within 90 seconds of a transaction, of the price and volume data associated with the transaction.

¹⁶ Rule 11Aa3-1 under the Exchange Act ("transaction reporting rule") [17 CFR 240.11Aa3-1] defines an "effective transaction reporting plan" as a plan for collecting, processing and disseminating transaction reports with respect to transactions in reported securities that has been approved by the Commission.

¹⁷ Rule 11Aa2-1 [17 CFR 240.11Aa2-1] ("NMS securities rule"). See Release No. 34-24635 (June 23, 1987) [52 FR 24149].

¹⁸ The SIA is a trade association representing over 500 securities firms in the United States and Canada, which collectively account for approximately 90% of the securities business transacted in North America. The SIA petition was submitted on April 1, 1985 pursuant to Rule 4(a) of the Commission's Rules of Practice [17 CFR 201.4(a)]. This petition is available for public inspection and copying in the Commission's Public Reference Room (see File No. S7-31-86).

¹⁹ The comment letters are available for public inspection and copying at the Commission's Public Reference Room (see File No. S7-31-86).

broadly as information relating to comparable companies having a reporting history under the Exchange Act.

Of the commentators favoring a reduction in the prospectus delivery period, four commentators specifically addressed the appropriate time period,²⁰ but only one commentator provided empirical data to support its position.²¹ Those commentators believed that 25 calendar days should provide adequate time for the establishment of an orderly trading market for securities covered by either Proposal I or II.

Five of the commentators supporting changes to Rule 174 preferred the approach of Proposal II. They believed that it would be sufficient to rely upon listing standards, filing and disclosure requirements, and available market information about exchange-traded or NASDAQ securities to curb the potential for abuse associated with hot issues. Four of those commentators stated their belief that the distinctions between NASDAQ/NMS and NASDAQ-only securities do not justify limiting relief to NASDAQ/NMS securities. Only one commentator supported transaction reporting as a condition for relief under Rule 174. In that commentator's view, the qualification criteria for transaction reporting minimize the risk of abuse.

C. Analysis of Trading Volume and Price Data by the Directorate of Economic and Policy Analysis

The Commission's Directorate of Economic and Policy Analysis ("DEPA")²² analyzed aftermarket trading behavior of transaction-reported common stocks and non-NMS/NASDAQ common stocks issued in initial offerings between March 1985 and February 1986 ("DEPA Analysis").²³ The analysis focused on daily volume and relative price changes occurring with respect to aftermarket transactions in 96 such securities during the first 90 and 150 trading days, respectively, following registration effectiveness. The

total sample consisted of 33 transaction-reported stocks and 63 non-NMS/NASDAQ stocks.

The volume data indicated that abnormal volume subsided well before 90 calendar days for both transaction-reported and non-NMS/NASDAQ securities.²⁴ The volume and price data did not support the zero-day exemption contained in Proposal I. The data indicated that abnormal volume and price behavior subsided no more quickly for those securities that would have qualified for the zero-day exemption than for the other securities in the total sample.²⁵

II. Amendment of Rule 174

The Commission has determined to reduce the prospectus delivery period based on Proposal II. The amendment to Rule 174 is intended to reduce unnecessary regulatory burdens and compliance costs imposed upon dealers in the aftermarket by section 4(3), consistent with investor protection.

The revised rule preserves an aftermarket prospectus delivery period and associated "quiet period"²⁶ to ensure that investors obtain full and fair disclosure concerning non-reporting issuers. Because of the importance of the aftermarket prospectus delivery period and the "quiet period" to investor protection, the Commission intends to institute appropriate action for failure to comply with the requirements of section 4(3) as modified by Rule 174 as amended.

The amendment to Rule 174²⁷ reduces the 40 or 90 day prospectus delivery period after a registered offering of securities by a non-reporting company, if, as of the "offering date," the securities are either listed on a national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association.²⁸ For purposes of this provision, the term "offering date" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public. Under the Rule as revised, a

dealer's prospectus delivery obligation with respect to the offerings described above will cease 25 calendar days after the offering date.

Under Proposal II, the prospectus delivery period would have run solely from the date of effectiveness. As adopted, Rule 174(d) establishes a trigger date that conforms to the provisions of section 4(3)(B) of the Securities Act. The statutory trigger date has been retained because the need for prospectus delivery does not arise until the bona fide commencement of a public offering, which may be later than the date on which a registration statement becomes effective.²⁹

In response to the Commission's question in the Proposing Release, commentators stated their belief that a reduced prospectus delivery period of 25 calendar days should provide a reasonable time for the secondary market to assimilate available information and to stabilize.³⁰ The DEPA analysis indicated that abnormal trading volume for the transaction-reported and NASDAQ-only securities tested was 80% dissipated by the 16th trading day (23rd calendar day).³¹

The delivery period is expressed in terms of calendar rather than trading days in order to simplify compliance and to make the calculation under Item 502(e) of Regulation S-K³² easier. Under item 502(e), the registrant is required to insert into the prospectus legend the expiration date of the section 4(3) delivery period. That legend indicates that all dealers, whether or not participating in the distribution of securities that are the subject of a Securities Act registration statement, may be required to deliver a prospectus for the applicable delivery period. As is currently the case, the registrant, through its managing underwriter, will be in a position to know when the offering will commence and therefore able to calculate the correct date for the prospectus legend.

The Rule 174 amendment covers registered offerings of all exchange listed and NASDAQ securities by previously non-reporting companies. It does not apply to offerings of over-the-counter securities for which transaction quotations are solely listed by the

²⁰ The SIA addressed this issue in its rulemaking petition.

²¹ That commentator presented aftermarket price and volume data for the first 10, 25, 40 and 90 days of trading in securities that were issued in various initial public offerings it underwrote. The data indicated that the heaviest trading volume generally occurred within the first 10 trading days and, after 25 trading days, the average volume leveled off substantially. The commentator supplying the data favored the adoption of Proposal II.

²² DEPA was merged with the Office of the Chief Economist in January 1988, to create the Office of Economic Analysis.

²³ DEPA's analysis is available for public inspection and copying at the Commission's Public Reference Room (see File No. S7-31-88).

²⁴ The analysis notes that, while choosing the point when the level of trading volume becomes normal is judgmental, abnormal trading volume for both groups of stocks was 80% dissipated by the 16th day of trading (23rd calendar day) and virtually non-existent by about the 38th trading day (56th calendar day). DEPA Analysis at 6.

²⁵ DEPA Analysis at 6, 14.

²⁶ See n. 11, *supra*.

²⁷ See new paragraph (d) of Rule 174. Subsequent paragraphs of Rule 174 have been redesignated.

²⁸ Currently, NASDAQ is the only such quotation system.

²⁹ For example, this could occur where a registrant relies upon Securities Act Rule 430A [17 CFR 230.430A] or Rule 415 [17 CFR 230.415].

³⁰ See n. 21, *supra*.

³¹ See n. 24, *supra*.

³² 17 CFR 229.502(e).

National Quotation Bureau in the "pink sheets."³³

The existence of regulatory requirements applicable to exchange-listed and NASDAQ securities and market processes provide adequate investor protection to permit relaxation of the prospectus delivery requirements. Listing standards, filing and disclosure requirements, and market information requirements assure the availability and timely dissemination of material information.

In admitting securities for trading, the exchanges and the National Association of Securities Dealers ("NASD") impose qualification criteria on issuers.³⁴ These criteria specify minimum standards for an issuer's financial characteristics, public distribution of a security and market activity of a security.³⁵ They also require issuers to comply with continuing filing and disclosure obligations.³⁶ These requirements are intended to assure that information about qualifying issuers is available to the marketplace and is updated on a timely basis.³⁷

³³ The NASD has submitted to the Commission a rule filing that would establish a Non-NASDAQ Reporting System: An electronic price and volume reporting system for non-NASDAQ securities. See SR-NASD-87-55. Approval by the Commission of the rule filing would not cause "pink sheet" securities to be subject to the reduced prospectus delivery period now set out in Rule 174.

³⁴ See, e.g., New York Stock Exchange ("NYSE") Listed Company Manual, reprinted in NYSE Guide (CCH) ¶ 2501 at 4225-28; American Stock Exchange ("Amex") Guide (CCH) ¶ 10.001-10.005; Philadelphia Stock Exchange Guide (CCH) ¶ 2803 at 2301, Rule 803(a); Pacific Stock Exchange Guide (CCH) ¶ 3025 at 3053-54, Rule 1 Section 3(b); Midwest Stock Exchange Guide (CCH) ¶ 1897, Article XXVIII, Rule 7; Boston Stock Exchange Guide (CCH) ¶ 2260, Chapter XXVII, Section 1; NASD Manual (CCH) ¶ 1754 at 1571, Schedule D to the By-Laws, Part VI, Sections 2 (a) and (b).

³⁵ For example, these standards may specify: (1) That there be a minimum number of shares of the issuer's security in the hands of a minimum number of public shareholders; (2) that the issuer meet minimum asset, capital and surplus, or income requirements; (3) that the issuer have a certain operating history; (4) that the public float have a certain market value. See standards for listing and quotation cited in n. 34, *supra*. For initial inclusion in NASDAQ, a security must have two registered and active market makers, and each market maker must be willing to buy and sell the security for its own account on a continuous basis and must enter and maintain firm two-sided quotations in the NASDAQ system. NASD Manual (CCH) ¶ 1754 at 1565, 1571, Schedule D to the By-Laws, Part II, Section 1(c)(1) and Part VI, Sections 2 (a) and (b).

³⁶ See n. 34 *supra*. E.g., NYSE Guide ¶ 2507; Amex Guide ¶ 10.030; NASD Manual ¶ 1754; Philadelphia Stock Exchange Guide ¶ 2805; Midwest Stock Exchange Guide ¶ 1898; Boston Stock Exchange Guide ¶ 2267.

³⁷ Issuers seeking to have their securities listed on an exchange or reported under the NASD's Transaction Reporting Plan must register their securities immediately under section 12(b) or 12(g) of the Exchange Act [15 U.S.C. 78b (b), (g)]. A NASDAQ-only issuer need not register its securities

To qualify for the 25-day prospectus delivery period, the applicable Exchange or NASDAQ standards must be satisfied as of the offering date under new Rule 174(d). For the shortened delivery period to apply where an issuer undertakes a unit offering, or more than one class of securities is covered by a prospectus, each security comprising a unit or offered by means of the prospectus must be so qualified.

Trade and quotation reporting requirements applicable to exchange-listed and NASDAQ securities help investors, self-regulatory organizations, and the Commission to monitor and surveil aftermarket transactions. Securities that have been designated for trading in the National Market System are subject to both continuous firm quotation³⁸ and real-time last sale reporting requirements.³⁹ NASDAQ-only securities and regional exchange-listed securities that are not transaction-reported also are subject to continuous firm quotation requirements.⁴⁰

Consistent with Proposal II, Rule 174, as amended, retains the section 4(3) delivery periods for secondary market transactions in the securities of non-reporting companies where the securities (or any of the securities comprising a unit) are neither exchange-listed nor NASDAQ securities. The amendment to Rule 174 also preserves the prospectus delivery requirement for a dealer acting as an underwriter or effecting transactions in an unsold allotment or subscription of securities.⁴¹ Finally, this amendment does not alter a dealer's prospectus delivery obligations under Exchange Act Rule 15c2-8.⁴²

In the Proposing Release, the Commission requested comment on whether to exclude from relief under the proposed Rule 174 amendment "blank check" offerings by companies with minimal operating assets. These offerings involve "shell" companies

under section 12(g) of the Exchange Act until 120 days after the last day of the issuer's fiscal year during which the registration statement became effective. NASD Manual (CCH) ¶ 1754 at 1565, Schedule D to the By-Laws, Part II, sections 1(b) (1) and (2). However, upon effectiveness of the registration statement, the registrant will be subject to the reporting requirements of Exchange Act section 15(d).

³⁸ Exchange Act Rule 11Ac1-1 [17 CFR 240.11Ac1-1] ("the firm quotation rule").

³⁹ See n. 15 *supra*.

⁴⁰ The firm quotation rule: NASD Manual, (CCH) ¶ 1754 at 1561, Schedule D to the By-Laws, Part VI, sections 2(a) and (b).

⁴¹ See current Rule 174(e) [17 CFR 230.174(e)], redesignated as Rule 174(f).

⁴² The Commission is adopting a technical amendment to Rule 15c2-8(d) [17 CFR 240.15c2-8(d)] to reflect the fact that the obligation to deliver prospectuses under that rule is unaffected by this amendment to Rule 174.

going public by means of registration statements that do not specify business or investment plans at the time of effectiveness. Instead of creating an exclusion from the amendment to Rule 174 for such "blank check" offerings, the Commission has determined to rely upon the issuer financial and trading criteria for exchange listing or NASDAQ authorization to screen out offerings that are most susceptible to abuse.

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendment to Rule 174, the Commission requested commentators to provide views and data as to the costs and benefits associated with the amendment to reduce the 40 or 90 day aftermarket prospectus delivery periods specified in section 4(3) of the Securities Act. In this regard, the Commission noted that the amendment would reduce unnecessary costs and regulatory burdens imposed by section 4(3) and Rule 174 thereunder. The commentators on the rule proposals did not quantify the costs of the section 4(3) prospectus delivery requirements nor the cost savings under the respective proposals. Commentators that addressed the issue of benefits pointed out that the relief provided by Proposal II would apply to a broader class of securities offerings.

IV. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis concerns amendments to Securities Act Rule 174 and Exchange Act Rule 15c2-8, and has been prepared in accordance with 5 U.S.C. 604. A summary of the Initial Regulatory Flexibility Analysis was included in the Proposing Release.

Reasons For and Objectives of Amendments

The objective of the amendment to Rule 174 is to reduce the aftermarket prospectus delivery periods specified in section 4(3) of the Securities Act where current trading requirements, issuer standards and market processes assure the availability and timely dissemination of material information and minimize the potential for abuse. By relaxing the aftermarket prospectus delivery obligation through a reduction of the time period, this amendment reduces unnecessary costs imposed by the prospectus delivery requirements of section 4(3) and Rule 174 thereunder. The change achieves these purposes while preserving adequate disclosure of information to investors and investor protection under the Federal securities laws.

The technical amendment to Rule 15c2-8 reflects the fact that the prospectus delivery requirements under that rule are not affected by the Rule 174 amendment.

Public Comment

No commentators responded to the Commission's request for comments on the Initial Regulatory Flexibility Analysis.

Significant Alternatives

Pursuant to section 604 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; and

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities.

The scope of the relief provided under Rule 174, as amended herein, is based on investor protection concerns. Hot issue abuses and investor protection concerns arise with respect to the securities offerings of small entities as well as those of larger companies. The relief provided herein reduces unnecessary regulatory burdens and compliance costs imposed by section 4(3) to the extent consistent with investor protection.

(3) The use of performance rather than design standards. With respect to Rule 174, as amended herein, performance standards are not consistent with this agency's statutory mandate to provide adequate disclosure to investors.

(4) An exemption from coverage of the rules, or any part thereof, for small entities. Rule 174, as amended herein, provides relief from the prospectus delivery requirements of section 4(3) to the extent consistent with investor protection. Extending an exemption to or providing different prospectus delivery requirements for small entities for transactions subject to the Securities Act would not be warranted in light of the Commission's statutory mandate.

As more fully discussed in the text of the release, the Commission evaluated the alternative rule proposals and determined to provide relief under Rule 174 based on Proposal II for transactions in exchange-listed and NASDAQ securities.

V. Statutory Basis

Rule 174 is being amended by the Commission pursuant to sections 4 and 19 of the Securities Act. Rule 15c2-8 is being amended pursuant to sections 2, 15(c) and 23(a) of the Exchange Act.

Because these rule changes are intended to relieve existing regulatory restrictions within the meaning of section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)), the Commission has determined to make them effective immediately upon publication in the Federal Register.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

VI. Text of Amendments

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

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * * § 230.174 also issued under sec. 4, 48 Stat. 77; 15 U.S.C. 77d.

2. § 230.174 is amended by redesignating paragraphs (d) and (e) as (e) and (f), respectively, and adding new paragraph (d) to § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under Section 4(3) of the Act.

(d) If (1) the registration statement relates to the security of an issuer that is not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, and (2) as of the offering date, the security is listed on a registered national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association, no prospectus need be delivered after the expiration of twenty-five calendar days after the offering date. For purposes of this provision, the term "offering date" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

(Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * * § 240.15c2-8 also issued under sec. 2, 52 Stat. 1075, 15 U.S.C. 78b; 15, 48 Stat. 895, as amended, 15 U.S.C. 78o.

2. The last sentence of paragraph (d) of § 240.15c2-8 is revised to read as follows:

§ 240.15c2-8 Delivery of prospectus.

(d) * * * (The 40-day and 90-day periods referred to above shall be deemed to apply for purposes of this rule irrespective of the provisions of paragraphs (b) and (d) of § 230.174 of this Chapter).

By the Commission.

Jonathan G. Katz,

Secretary.

April 4, 1988.

[FR Doc. 88-7775 Filed 4-8-88; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM87-16-001]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

Issued April 4, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration and denying motion for stay of Order No. 490.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing solely for the purpose of further consideration of Order No. 490 (published February 12, 1988, 53 FR 4121) in order to review more fully the argument raised in the requests for rehearing of the final rule in Order No. 490. The final rule, which is effective April 12, 1988, permits abandonment of certain sales and purchases under the Natural Gas Act. The Commission is also denying a motion to stay the effective date of Order No. 490.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT:

Jacob Silverman, Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, DC 20426, (202) 357-8315.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration and Denying Motion for Stay of Order No. 490

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, and Charles A. Trabandt.

On February 5, 1988, the Commission issued Order No. 490, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, Final Rule.

The Commission has received thirty-six timely requests for rehearing in this proceeding,¹ and one party, American Public Gas Association (APGA) included in its request a motion for stay of Order No. 490 pending judicial review if the Commission did not grant the rehearing.

APGA asserts that its members, as well as others, would suffer irreparable injury during the pendency of judicial review because once the rule became effective producers would commence to exercise their right to unilaterally abandon gas under expired or terminated contracts. It alleges that producers will commence selling such gas to others and that such gas cannot be replaced.

In reviewing a request for a stay, the Commission applies the standard set forth in the Administrative Procedure Act, 5 U.S.C. 705 (1982), i.e., if the Commission finds that "justice so

requires," which entails evaluating the movants' claim of imminent, irreparable injury. If this standard is not met, this Commission follows a general policy of denying motions for stays of its orders, based on the need for definitiveness and finality in administrative proceedings.²

In this case movant merely asserts that producers may immediately exercise their rights under Order No. 490 and abandon gas that qualifies. Movant has failed to show any irreparable injury. First, the party to whom the gas is now dedicated can purchase it as well as any other party, although possibly at a higher price. Thus at most there may be an economic injury which can be readily remedied. If the current purchaser decides it does want to purchase the gas, it is clearly not subject to any immediate harm. To the extent that the "dedicated" reserves are sold to others and thus is no longer available to the current purchaser, the only harm to the current purchaser would be the need to replace that gas sometime in the future. Movant has not shown that that gas could not be replaced by purchases in the market if needed. If the purchases were made at a higher price, the harm would be economic injury as to which the party can be made whole.

Accordingly, we find that movant has not shown that implementation of the Order No. 490 regulations will cause imminent, irreparable harm to it or will not otherwise be in the public interest in its impact on consumers or the natural gas industry in general.

In light of the foregoing, the Commission finds that justice does not require further postponing the effective date of Order No. 490 and the motion for a stay is denied. However, this denial is without prejudice to the Commission's consideration of the merits of movants' request for rehearing.

In order to review more fully the arguments raised in the requests for rehearing, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no

² See, e.g., *Arkansas Louisiana Gas Co.*, 23 FERC ¶ 61,324 (1983).

answers to the requests for rehearing will be entertained by the Commission.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,
Acting Secretary.

Concurring Opinion of Commissioner Charles A. Trabandt

I do not object to tolling rehearing of the Final Rule in Order No. 490 for the purpose of further consideration of arguments raised in the many requests for rehearing. I am aware of the numerous issues raised by the parties. Also, I invite your attention to my concurring opinion to Order No. 490 issued separately in the same docket for a detailed discussion of the serious legal and policy problems I find in Order No. 490. I do object, however, to the majority's argumentation in denying the motion for stay included in the rehearing request of the American Public Gas Association.

The majority reviews the applicable legal standard for reviewing a request for a stay. The legal standard, "if justice so requires," turns on an analysis of the claimed imminent, irreparable injury. The majority then addresses the facts in this situation and concludes, "if the purchases were made at a higher price, the harm would be economic injury as to which the party can be made whole." I am not persuaded by the discussion to date that parties suffering the loss of dedicated, low-cost old gas reserves under expired or modified contracts can, in fact, be made whole once the dedicated reserves are unilaterally abandoned under Order No. 490, beginning potentially on April 12, 1988. The average price of natural gas under the expired old gas contracts nationwide is \$0.90 and the total amount of old gas covered by expired contracts approximately exceeds one-fifth of the nationwide old gas supply. The analysis of economic injury in this order simply does not support the asserted conclusion that "part(ies) can be made whole." In the absence of persuasive support for that conclusion, the Commission should consider a stay until rehearing is complete.

Charles A. Trabandt,
Commissioner.

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BILLING CODE 6717-01-M

¹ Petitions were filed by the following parties: American Public Gas Association; Associated Gas Distributors; American Gas Association; Amoco Production Co.; Anadarko Petroleum Corporation; ANR Pipeline Co. & Colorado Interstate Gas Company; Arkla, Inc.; Columbia Gas Transmission Corp.; El Paso Natural Gas Co.; Enron Interstate Pipeline Group; Indicated Producers; Interstate Natural Gas Assoc. of America; Michcon Michigan Consolidated Gas Company; Minnesota Department of Public Services; State of Michigan and Michigan Public Service Commission; Mountain Fuel Resources; Maryland People's Counsel; National Fuel Gas Supply Corporation; Northern Illinois Gas Company; Peoples Gas Light and Coke Company and North Shore Gas Company; Pacific Gas and Electric Company; Panhandle Eastern Pipe Line Company and Trunkline Gas Company; Process Gas Consumers Group; The Georgia Industrial Group; Am. Iron and Steel Institute; Peoples Natural Gas Company; Public Service Commission of New York; Producer Associations; Southern California Gas Company; Tennessee Gas Pipe Line Company; Texas Gas Transmission Corp.; Transcontinental Gas Pipe Line Corp.; UGI Corporation; United Distribution Companies; United Gas Pipeline Co.; Valero Interstate Transmission Co.; Williams Natural Gas Company; and Williston Basin Interstate Pipeline Company.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[A-1-FRL-3359-2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology For Raymark Industries, Inc.**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions by Raymark Industries, Incorporated, a Division of Raymark Corporation in Stratford, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective May 11, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106 and the Environmental Protection Agency, Public Reference Unit, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On November 4, 1987 (52 42323), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8013 as a revision to the Connecticut SIP. The final State Order was submitted by Connecticut as a formal SIP revision on October 27, 1987. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Raymark Industries, Inc. (Raymark) as required by subsection 22a-174-20(ee),

"Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8013 and has determined that the level of control required by this Order represents RACT for Raymark. RACT for Raymark consists of specified capture and destruction efficiencies for the control equipment it is operating, and daily, monthly or quarterly limitations on the emissions of VOC for other uncontrolled processes. The controls that Raymark has already installed and is operating are achieving a reduction of approximately 874 tons per year of VOC. VOC emissions from Raymark after control are approximately 68 tons per year. The specific requirements of the State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving Connecticut State Order No. 8013 as a revision to the Connecticut SIP. The provisions of State Order No. 8013 define and impose RACT on Raymark Industries, Incorporated to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone,

Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: March 28, 1988.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(42) to read as follows:

§ 52.370 Identification of plan

(c) * * *
(42) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 27, 1987.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated October 27, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8013 and attached Compliance Timetable for Raymark Industries, Incorporated in Stratford, Connecticut effective on September 24, 1987.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 88-7169 Filed 4-8-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION**41 CFR Part 101-25**

[FPMR Amdt. E-263]

Miscellaneous Changes

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation deletes text that is no longer applicable and updates