Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE IA E5 Vinton, IA [Revised]

Vinton Veterans Memorial Airpark, IA
(Lat. 42°13′03″ N., long 92°01′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Vinton Veterans Memorial Airpark.

* * * * *

Issued in Kansas City, MO, on August 29, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–27380 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–18]

Establishment of Class E Airspace; Marion, VA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on May 23, 1997 (62 FR 28335), Airspace Docket No. 97–AEA–18. The final rule established Class E airspace at Marion, VA.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA–530, Federal Aviation Administration, Federal Building, #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553-4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 97–13581, Airspace Docket 97–AEA–18, published on May 23, 1997 (62 FR 28335), established the Class E airspace at Marion, VA. An error was discovered in the coordinates of the airspace description. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the Marion, VA, Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on May 23, 1997 (62 FR 28335), (**Federal Register** Document 97–13581) is corrected as follows:

§ 71.1 [Corrected]

On page 28336, column 1, the airspace description for Marion, VA, is corrected to read as follows:

* * * * *

AEA VA E5 Marion, VA [Corrected]

Mountain Empire Airport,
Marion/Wytheville, VA
(Lat. 36°53′41″ N., long 81°21′00″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Mountain Empire Airport and within 8 miles north and 4 miles south of the 073° bearing from the airport extending from the 10-mile radius to 16 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27396 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–002]

Establishment of Class E Airspace; East Butler, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on May 23, 1997, Airspace Docket No. 96–AEA–002. The final rule established Class E airspace at East Butler, PA.

EFFECTIVE DATE: October 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Michael J. Sammartino, Air Traffic Division, Operations Branch, AEA–530, Federal Aviation Administration, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone: (718) 553–4530.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 97–13585, Airspace Docket 97–AEA–002, published on May 23, 1997 (62 FR 28333), established the Class E airspace at East Butler, PA. An error was discovered in the airport name in the airspace description exclusion areas. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace description for the East Butler Class E airspace area, incorporated by reference in § 71.1, as published in the **Federal Register** on May 23, 1997 (62 FR 28333), (**Federal Register** Document 97–13585) is corrected as follows:

§ 71.1 [Corrected]

On page 28334, column 1, the airspace description for East Butler, PA, is corrected to read as follows:

* * * * *

AEA PA E5 East Butler, PA [Corrected]

Butler Memorial Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°51′19″ N., long. 79°51′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Butler Memorial Hospital Heliport, excluding that portion that coincides with the Butler, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on September 16, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–27502 Filed 10–16–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–7470 and 34–39227; S7–26–96]
[International Series Release No. 1103]

RIN 3235–AG85

Offshore Press Conferences, Meetings with Company Representatives Conducted Offshore and Press-Related Materials Released Offshore

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Commission is adopting two safe harbors designed to facilitate U.S. press access to offshore press activities. The two safe harbors will clarify the conditions under which journalists may be provided access to offshore press conferences, offshore meetings and press materials released offshore, in which a present or proposed

offering of securities or tender offer is discussed, without violating the provisions of Section 5 of the Securities Act of 1933, or the procedural requirements of the tender offer rules promulgated under the Williams Act.

EFFECTIVE DATE: The rule and amendments will become effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Commission is adopting a safe harbor with respect to the registration requirements of the Securities Act of 1933 (''Securities Act'')[1] to permit a foreign private issuer or foreign government issuer, selling security holder or their representatives to provide any journalist, whether foreign or domestic, with access to press conferences held outside the United States, to meetings with issuer or selling security holder representatives conducted outside the United States, or to press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed (''Securities Act safe harbor''). The safe harbor would clarify that providing press access under the safe harbor would not be deemed an ''offer'' for the purposes of Section 5[2] of the Securities Act;[3] ''directed selling efforts'' within the meaning of Regulation S[4] under the Securities Act; or a ''general solicitation'' within the meaning of Regulation D[5] under the Securities Act. The Commission also is adopting a safe harbor whereby a bidder for the securities of a foreign private issuer, as well as the subject company, their representatives, or any other person specified in Rule 14d–9(d)[6] under the Securities Exchange Act of 1934 (''Exchange Act''), will not be subject to the filing and procedural requirements of Regulations 14D[7] and 14E[8] under the Exchange Act by virtue of providing any journalist, whether foreign or domestic, with access to its press conferences held outside the United States, to meetings with its representatives conducted outside the United States, or to press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed (''Tender Offer safe harbor'').

I. Background

U.S. journalists are being excluded on a regular basis from the offshore press activities of foreign issuers.[9] This practice may not foster the interests of U.S. investors, since the information is made available to U.S. press shortly following the release of the information offshore. Instead, the practice is both anti-competitive and potentially disadvantageous to U.S. investors by delaying their access to information made immediately available to investors offshore. The purpose of this rulemaking is to eliminate this unintended and undesirable consequence of the Commission's rules governing offering publicity.

The Commission published for comment in October 1996 proposed safe harbors to facilitate U.S. press access to offshore press activities conducted by issuers, selling security holders and their representatives (''Proposing Release'').[10]

The Commission proposed these safe harbors in recognition of the difficulties faced by journalists for publications with significant U.S. circulation in gaining direct access to offshore press activities in which a present or proposed offering of securities or tender offer is discussed. Many issuers have denied these journalists access to offshore press conferences, offshore meetings with company representatives and press materials released offshore that pertain to a present or proposed securities offering or tender offer out of concern that this access would result in a violation of the U.S. federal regulatory requirements for these offerings. Past rulemaking and interpretive guidance by the Commission and its staff do not appear to have allayed the concerns of companies conducting offshore press activities, and U.S. press continue to be denied access to offshore press activities even when no U.S. offering is contemplated.

The U.S. Congress has also been aware of this exclusion. In the National Securities Markets Improvement Act of 1996,[11] Congress directed the Commission to conduct rulemaking to clarify the status of offshore press activities under the Securities Act.

After reviewing the thirteen comment letters received on the proposed safe harbors and further considering the proposals,[12] the Commission is adopting the safe harbors substantially as proposed with one significant modification. The Securities Act safe harbor as adopted will not be available to U.S. issuers.[13] Although the Commission initially had proposed making that safe harbor available to both foreign and domestic issuers, the Commission has determined that relief is unnecessary with respect to U.S. issuers and that it may be preferable to address publicity in connection with offerings by U.S. issuers in a more comprehensive fashion.

Some foreign jurisdictions, unlike the United States, permit companies that are offering securities to conduct press conferences, issue press releases, and meet with members of the press during the offering as a means of publicizing the offering. Foreign issuers adopting those practices are unlikely to be doing so for the purpose of circumventing U.S. restrictions on publicity. On the other hand, extending the safe harbor to U.S. issuers that have not traditionally employed such practices in the offering of securities unnecessarily invites that potential for abuse. In addition, the Commission understands that the difficulty experienced by the U.S. press in obtaining access to foreign press activities is most significant with respect to foreign issuers.[14] Accordingly, by excluding U.S. issuers from the Securities Act safe harbor, the Commission is crafting a narrow approach that addresses the concerns of the U.S. press by accommodating the anomalies that can result when offshore offering practices differ from what is permitted in the United States, yet allows the Commission to consider crafting a regulatory approach with respect to U.S. issuers in a comprehensive fashion both with respect to offshore and domestic press activities.

The Commission may reconsider the safe harbor adopted today at a later date in light of its ongoing reexamination of

---

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 77e.

[3] 17 CFR 230.135e.

[4] 17 CFR 230.901 through 17 CFR 230.904 and Preliminary Notes.

[5] 17 CFR 230.501 through 17 CFR 230.508 and Preliminary Notes.

[6] 17 CFR 240.14d–9.

[7] 17 CFR 240.14d–1 through 17 CFR 240.14d–10.

[8] 17 CFR 240.14e–1 through 17 CFR 240.14e–2.

[9] *See SEC Rules Not OK*, EUROMONEY, July 1997, at 64.

[10] Release No. 33–7356 (Oct. 10, 1996) [61 FR 54518].

[11] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[12] The comment letters are available for inspection and copying in the Commission's public reference room. Refer to file number S7–26–96. Comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.

[13] In contrast, the Tender Offer safe harbor will be available to both U.S. and foreign bidders as long as the target company qualifies as a foreign private issuer.

[14] *See supra* note 9. *See also* Roberta S. Karmel & Mary S. Head, *Barriers to Foreign Issuer Entry into U.S. Markets; Symposium on Managing Economic Interdependence*, 24 LAW & POL'Y INT'L BUS. 1207 (1993).

the Commission's regulation of securities offerings under the Securities Act and the rules thereunder. In July 1996, the Commission issued a Securities Act Concept Release (''Concept Release'') [15] that reviewed the current regulatory framework for securities offerings, particularly with respect to regulating publicity in connection with a securities offering. The Concept Release suggested a number of alternative approaches and solicited comments from the public. Many commenters recognized that this wide-ranging examination of the permissible level of publicity in connection with securities offerings is fundamental to the Commission's administration of the Securities Act. On the other hand, they urged that the practice of excluding the U.S. press from foreign press activities itself presents ongoing significant policy concerns that should and can be addressed in a narrow and expeditious fashion.

II. Securities Act Safe Harbor

A. General

The Commission is adopting Rule 135e under the Securities Act to provide a safe harbor for offshore press activities conducted in connection with an offering by a foreign private issuer or foreign government issuer.[16] Under the Securities Act safe harbor, a foreign private issuer or foreign government issuer, selling security holder, or their representatives may provide foreign and U.S. journalists [17] with access to offshore press conferences, meetings with issuer or selling security holder representatives conducted offshore, or press-related materials released offshore without being viewed as making an ''offer'' for purposes of Section 5 of the Securities Act as long as certain conditions enumerated below are satisfied. Press activities that are covered by the Securities Act safe harbor also would not constitute a general solicitation or general advertising within the meaning of Regulation D, or ''directed selling efforts'' within the meaning of Regulation S. The Commission is adopting amendments to Rule 502 [18] of Regulation D and Rule 902 [19] of Regulation S [20] to reflect this.

As adopted, the safe harbor will apply to all foreign private issuers and foreign governments regardless of whether these issuers file periodic Exchange Act reports with the Commission. In addition, representatives of the issuer and the selling security holders, such as underwriters and public relations firms, may rely on the safe harbor, although persons with no relationship to the issuer are excluded from the safe harbor.

As in the proposal, the safe harbor does not cover paid advertisements. The Commission also noted in the Proposing Release that analysts' research reports would not be covered, since Securities Act Rules 138 [21] and 139 [22] cover those reports. Several commenters opposed the exclusion of analysts' reports from the Securities Act safe harbor because these reports are often distributed as part of the offshore offering process. However, the Commission did not intend that providing research reports in written press-related materials would cause any materials included in the press package, including analysts' research reports, to lose safe harbor protection. To clarify, analysts' research reports would be covered by the new safe harbor (even if Rules 138 and 139 are not available) to the same extent, and under the same conditions, as other written materials in the package.[23]

The safe harbor only applies to the Section 5 registration requirements of the Securities Act. The scope of the antifraud or other provisions of the federal securities laws, including Sections 12(a)(2) [24] and 17(a) [25] of the Securities Act, that relate to both oral and written material misstatements and omissions in the offer and sale of securities will not be affected by the safe harbor.

B. Conditions to the Safe Harbor

The Securities Act safe harbor is available only if the conditions described below are satisfied. These conditions are intended to minimize the possibility that issuers may use the safe harbor to circumvent important Securities Act protections.

The safe harbor as adopted is a purely objective test. All of the nine commenters who addressed the desirability of an objective test supported that approach. Many of them believed that a subjective test would result in the continued exclusion of U.S. press from offshore press activities. In addition, commenters noted that the antifraud and civil liability provisions of the federal securities laws should provide adequate protection to investors.

1. Press Activity Must Occur Offshore

The press activities that are covered by the safe harbor must occur outside of the United States.[26] To come under the safe harbor, a press conference or meeting with issuer or selling security holder representatives must be conducted outside the United States, and any press-related materials must be released outside of the United States. Under this approach, the journalist to whom access is provided must receive any written press-related materials at a physical location and address that is offshore. In addition, conference calls in which at least one of the participants is located in the United States would not be covered by the safe harbor.

Follow-up press contacts in which the journalist (whether foreign or U.S.) is located in the United States at the time of the follow-up are not included in the safe harbor. As one of the commenters pointed out, this should not be a problem in most cases, since journalists who attend offshore press conferences typically are based offshore. As this commenter stated in its letter:

> We do not believe follow-up conversations [citation omitted] present a major issue because in most cases we believe journalists based offshore will be attending the offshore press conferences rather than U.S. residents travelling to another country. Attempting to cover follow-up conversations or other communications where one party is in the United States would pose an unnecessary complication for operation of the safe harbor.[27]

This approach is consistent with the limited goal of accommodating different offering practices followed in the issuer's home jurisdiction to avoid exclusion of U.S. press from those

---

[15] Release No. 33–7314 (July 25, 1996) [61 FR 40044].

[16] ''Foreign private issuer'' is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4(c) [17 CFR 240.3b-4(c)].

[17] Consistent with the recommendation of commenters, the safe harbor does not provide a definition of ''journalist.'' In response to questions by commenters, the Commission notes that it views on-line services and independent free-lance writers as bona fide ''journalists'' under both the Securities Act safe harbor and Tender Offer safe harbor.

[18] 17 CFR 230.502.

[19] 17 CFR 230.902.

[20] Preliminary Note 7 of Regulation S is being amended to clarify the relationship of that general statement to the Securities Act safe harbor and Tender Offer safe harbor.

[21] 17 CFR 230.138.

[22] 17 CFR 230.139.

[23] The application of Section 5 of the Securities Act to the publication of analysts' reports by analysts themselves, rather than by an issuer or selling security holder, will continue to be considered separately under Rules 138 and 139 under the Securities Act.

[24] 15 U.S.C. 77l(a)(2).

[25] 15 U.S.C. 77q(a).

[26] For clarification, a definition of ''United States'' has been included in Rule 135e that is the same as the definition used in Rule 902(p) of Regulation S [17 CFR 230.902(p)]. ''United States'' is defined to include the United States of America, its territories and possessions, as well as the individual states of the United States and the District of Columbia.

[27] Comment letter from Dow Jones & Company, Inc. of 12/17/96, at p. 5.

activities. This also is consistent with the general territorial approach used in the application of the Securities Act registration requirements.[28]

2. Offshore Offering

As a condition to the safe harbor, the offering must not occur solely within the United States. This condition reflects the Commission's concern that an issuer not conduct press activities solely to ''condition the market'' in the United States for the issuer's securities. There is a far greater likelihood that offshore publicity with respect to offerings that are made exclusively in the United States is intended for that purpose.

Some commenters urged the Commission to include U.S.-only offerings in the Securities Act safe harbor. They noted that these offerings may be newsworthy events in the home jurisdictions of foreign issuers, and that certain foreign jurisdictions may even require disclosure of these offerings. Rules 134,[29] 135[30] and 135c[31] under the Securities Act should provide adequate protection for issuers giving notice of offerings. In addition, even if the new safe harbor and Rules 134, 135 and 135c do not cover the press activities for U.S.-only offerings of foreign issuers, this does not necessarily mean that allowing U.S. press access would cause a Section 5 violation. Instead, that question would depend on an analysis of all the facts and circumstances.[32]

The condition that at least part of the offering be made offshore does not impose any requirement that a specific amount be offered offshore. The commenters that addressed this issue strongly supported this approach. Commenters noted that requiring a specific minimum portion of the offering to take place offshore would undercut the benefit of the safe harbor. Because issuers may not know how much of an offering will be made offshore, this uncertainty could lead them to exclude journalists from offshore press activities unnecessarily. There must, however, be an intent to make a bona fide offering offshore; the mere offering of a token amount will not suffice to bring the transaction within the safe harbor. Should the Commission become aware of abuses involving offerings that do not appear to include a bona fide offshore component, it will revisit the rule to consider imposing a stricter, more objective standard.

3. Access Provided to Both U.S. and Foreign Journalists

Another condition of the safe harbor is that the offshore press activity must be available to foreign journalists, as well as to U.S. journalists. The safe harbor would not be available if *only* U.S. journalists were permitted to attend the offshore press activity or to receive the offshore press-related materials. This minimizes the possibility that the safe harbor would be used to channel publicity regarding the offering solely into the United States. Foreign journalists must have the same access to the offshore press activity or materials, although the safe harbor does not require the issuer to monitor whether foreign journalists actually attend the offshore press activity or actually receive the offshore press-related materials for the safe harbor to apply. The Commission has determined that the actual attendance or receipt of materials by foreign journalists is beyond the issuer's control, and that a monitoring requirement would be too burdensome.

In the Proposing Release, the Commission indicated that it would view ''one-on-one'' interviews with a U.S. journalist as covered by the safe harbor. However, if the ''one-on-one'' meeting was conducted on an ''exclusive'' basis with a purely ''U.S. publication'' and no other ''one-on-one'' interviews with other foreign publications were given, the Commission expressed its concern that the exclusive ''one-on-one'' presentation might signal a scheme to channel publicity regarding the offering into the United States. Nonetheless, the Commission indicated in the Proposing Release that if an issuer or its representatives conducts a press conference that complies with the requirements of the safe harbor (*e.g.*, where both U.S. and foreign journalists are allowed to attend) either before or after the exclusive ''one-on-one'' meeting with a purely domestic publication,[33] the Commission would view the exclusive interview as covered by the safe harbor. A few commenters objected to this interpretation as unduly restrictive and unnecessary.[34] However, the Commission continues to believe that there is a real basis for concern that the exclusive ''one-on-one'' would be used solely to channel publicity into the United States, absent an offshore press conference or other foreign press activity conducted in connection with an offering.

4. Written Materials Requirements

Written materials that are released to journalists under the safe harbor present special concerns, especially if the materials are released with respect to an offering that is likely to be of significant interest to U.S. investors. The Commission is concerned that materials may result in offers of securities in the United States without the protections of the federal securities laws, or in conditioning the market in the United States for the securities to be offered. To address these concerns, the Commission proposed additional procedural safeguards to be imposed on written materials released to journalists. These safeguards were intended to alert recipients that such materials should not be considered an offer of securities for sale in the United States, and that when and if an offer is made in the United States, the appropriate required disclosure would be disseminated at that time.

The Commission is adopting the ''Written Materials Requirements'' substantially as proposed.[35] These requirements must be met whenever written materials released under the safe harbor discuss an offering of securities by any foreign private issuer and foreign government where part of the offering is or will be conducted in the United States. The requirements apply irrespective of whether the U.S. portion of the offering is registered or exempt. However, consistent with the Proposing Release, the ''Written Materials Requirements'' will not be imposed on securities offerings of foreign private issuers and foreign governments that are offered and sold wholly offshore because those offerings would appear to be of less significant interest to U.S. investors.

The ''Written Materials Requirements'' are as follows:

---

[28] *See* Rule 901 of Regulation S [17 CFR 230.901].

[29] 17 CFR 230.134.

[30] 17 CFR 230.135.

[31] 17 CFR 230.135c.

[32] Preliminary Note 7 to Regulation S should continue to provide guidance in that instance.

[33] The Commission does not believe that the press conference must be conducted within any particular time frame. In the Commission's view, a press conference held in connection with the offering would be sufficient evidence that the exclusive ''one-on-one'' was not an attempt to condition the U.S. markets.

[34] Some commenters opposed the press conference requirement for purely domestic publications as unnecessary for legitimate news coverage. *See* comment letter from Bloomberg L.P. of 12/17/96, at p. 8, and comment letter from Sullivan & Cromwell of 12/20/96, at p. 13.

[35] As originally proposed, the ''Written Materials Requirements'' were required to be satisfied whenever the written materials discussed an offering of securities by a U.S. issuer. Because U.S. issuers will not be covered by the safe harbor, as initially contemplated in the Proposing Release, the ''Written Materials Requirements'' have been modified to reflect this.

1. The materials must include a statement that the materials are not an offer of securities for sale in the United States; that the securities may not be offered or sold in the United States unless they are registered or exempt from registration; and that any public offering of securities to be made in the United States will be made by means of a prospectus that will contain detailed information about the company and management, as well as financial statements. In addition, if any portion of the offering will be registered in the United States, the materials must include a legend stating this intention.

2. The issuer or selling security holder cannot attach to, or otherwise make a part of, the written materials any form of purchase order or coupon that could be returned indicating interest in the offering.

Several commenters objected to certain aspects of the ''Written Materials Requirements,'' most notably the legending requirements and the coupon prohibition. They contended that these requirements would make the safe harbor difficult to apply without improving investor protection. Nonetheless, the Commission believes that these requirements significantly reduce the possibility that written materials released to U.S. journalists, and that may come into the hands of U.S. investors, will be used to offer securities in the United States without the protections of the U.S. securities laws. Since the requirements are only imposed when the issuer is otherwise required to meet U.S. offering regulations because a portion of the offering is to be made in the United States, the requirements are not unduly burdensome and the possibility of inadvertent violations is minimal.

III. Tender Offer Safe Harbor

A. General

The Commission is adopting the Tender Offer safe harbor as proposed. The safe harbor is only available with respect to a target company that is a foreign private issuer,[36] and is narrowly crafted to permit both the bidder and foreign target to conduct their activities in a manner consistent with local offering practices. Pursuant to Rule 14d-1 under the Exchange Act, [37] as amended, a bidder for the securities of a foreign private issuer, as well as the foreign target company, the representatives of either and any other person who may have a filing obligation under the Williams Act would not be deemed to have triggered the filing and procedural requirements of the Williams Act [38] by virtue of providing U.S. or foreign journalists with access to offshore press conferences, offshore meetings with representatives, and press-related materials released offshore, at or in which a present or proposed tender offer of securities is discussed.[39] Although the safe harbor will be available to either a U.S. or a foreign bidder, the safe harbor will only be applicable if the target company is a foreign private issuer. The safe harbor will not be available for the securities of a U.S. target issuer because there appears to be no need to accommodate foreign offering practices in that instance.

The safe harbor only affects the triggering of the filing and procedural requirements of the Williams Act, and would not affect the scope or applicability of the antifraud prohibition of Section 14(e) [40] of the Exchange Act, or the prohibition against trading on material nonpublic information regarding a tender offer in Rule 14e–3[41] under the Exchange Act.

The purpose of the Tender Offer safe harbor is to prevent the application of the U.S. tender offer rules before a bidder is prepared to proceed with the offer. After an offer has commenced with the filing of documents with the Commission under Regulation 14D, the safe harbor would not be available.

B. Conditions

The applicability of the Tender Offer safe harbor is subject to several conditions that are analogous to the Securities Act safe harbor conditions. Both U.S. and foreign journalists must have access to the offshore press activity, and the written materials that are covered by the safe harbor must be appropriately legended in circumstances where significant U.S. investor interest in the tender offer is likely. In addition, no means to tender securities, or coupons that could be returned to indicate interest in the tender offer may be provided as part of any press-related materials.

If the present or proposed tender offer described in the written materials released under the proposed tender offer safe harbor is for equity securities registered under Section 12 [42] of the Exchange Act, the materials must comply with certain requirements (''Written Materials Requirements'').[43] These requirements are as follows:

1. The materials must include a statement that the materials are not an extension of the tender offer in the United States for a class of equity securities of the subject company. In addition, if the bidder intends to extend the tender offer in the United States at some future time for a class of equity securities of the subject company, the materials must include a legend stating this intention and stating that the procedural and filing requirements of the Williams Act will be satisfied at that time.

2. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer may be provided as part of, or attached to, any press-related materials.

IV. Certain Findings

Section 23(a) of the Exchange Act [44] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, if any, and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Furthermore, Section 2 [45] of the Securities Act and Section 3 [46] of the Exchange Act, as amended by the National Securities Markets Improvement Act of 1996,[47] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will

---

[36] Several commenters objected to this limited application of the safe harbor. They noted, among other things, that bidders may have difficulty ascertaining whether a target company qualifies as a foreign private issuer. However, the Commission has determined that the safe harbor is easiest to apply if a foreign private issuer definition is used. A bidder may presume that a target company qualifies as a ''foreign private issuer'' if the target company is a foreign issuer that files registration statements with the Commission on the disclosure forms specifically designated for foreign private issuers (such as Form F–1 or Form 20–F), claims the exemption from Exchange Act registration pursuant to Exchange Act Rule 12g3–2(b) [17 CFR 240.12g3–2(b)], or is not reporting in the United States.

[37] 17 CFR 240.14d–1.

[38] Offshore press activity during a tender offer would not trigger the following requirements: Section 14(d)(1) [15 U.S.C. 78n(d)(1)] through Section 14(d)(7) [15 U.S.C. 78n(d)(7)] of the Exchange Act, Regulation 14D [17 CFR 240.14d–1 through 17 CFR 240.14d–10), and Rules 14e–1 [17 CFR 240.14e–1] and 14e–2 [17 CFR 240.14e–2].

[39] The Tender Offer safe harbor, however, would not exempt from the Securities Act registration requirements exchange offers in which a U.S. bidder is involved.

[40] 15 U.S.C. 78n(e).

[41] 17 CFR 240.14e-3.

[42] 15 U.S.C. 78*l*.

[43] As with the Written Materials Requirements under the Securities Act safe harbor, some commenters objected to the legending and coupon conditions of the Tender Offer safe harbor. The Commission believes that these conditions reduce the possibility that the Tender Offer safe harbor will be used to circumvent the protections provided by the federal securities laws. The Written Materials Requirements do not apply where those protections are not applicable, including in the case of tender offers for a class of equity securities that is not registered with the Commission, or tender offers for debt securities.

[44] 15 U.S.C. 78w(a).

[45] 15 U.S.C. 77b.

[46] 15 U.S.C. 78c.

[47] Pub. L. No. 104–290, § 106, 110 Stat. 3416 (1996).

promote efficiency, competition, and capital formation.

The Commission has considered the rule and amendments discussed in this release in light of the comments received in response to the Proposing Release and the standards in Section 23(a) of the Exchange Act. The rule and amendments are intended to reduce anti-competitive barriers between U.S. and foreign journalists. As a result of the rule and amendments, U.S. journalists will have increased access to offshore press activities conducted by issuers and selling security holders and, in the case of tender offers, by bidders for foreign private issuers, as well as the foreign target company itself. Although some of the requirements under the safe harbors, such as the legending requirements and coupon prohibition, may place certain burdens on those who wish to rely on the safe harbors, the overall effect of the safe harbors is to decrease anti-competitive barriers. Without the safe harbors, U.S. press will continue to be excluded from the offshore press activities of foreign issuers. This may harm U.S. investors because they eventually receive the information disseminated offshore, but on a delayed basis. With the safe harbors, U.S. investors will have access to information about their investments in a more timely and efficient manner. The safe harbors adopted today will facilitate U.S. press access to the offshore press activities, and promote efficiency, competition and capital formation by removing information barriers that may inadvertently harm U.S. investors and otherwise facilitating foreign issuer access to U.S. markets.

V. Cost-Benefit Analysis

The new rule and amendments will not impose any significant new burdens on issuers. No new registration, reporting or filing burdens will be imposed on issuers and selling security holders as a result of the safe harbors. The purpose of the safe harbors is to increase the access of U.S. journalists to the offshore press activities of issuers and selling security holders and, in the case of tender offers, bidders for foreign private issuers and the target company itself. Currently, U.S. journalists are excluded from the offshore press activities of foreign issuers. Instead of protecting U.S. investors, this practice may disadvantage U.S. investors because their access to information is delayed. The new rule and amendments will eliminate this unintended consequence of the Securities Act's regulation of offering publicity.

Although some of the Written Materials Requirements under either safe harbor marginally may increase burdens for those wishing to rely on the safe harbors, these requirements are intended to ensure that activities covered by the safe harbors are not actually offerings of securities or tender offers in the United States. Because the safe harbors should eliminate barriers to press access, the overall result of the safe harbors is to reduce the burdens and costs currently associated with limited and uneven press access. Moreover, the burdens imposed by the Written Materials Requirements are negligible. Based on an informal survey taken by Commission staff of attorneys in private practice whose clients could be expected to rely on these safe harbors, the Commission has estimated that the maximum compliance costs of these legending requirements is $500 in printing costs for each instance that the requirements are triggered.

Under the Securities Act safe harbor, the Written Materials Requirements are intended to help ensure that press-related materials distributed under the safe harbor will not result in an offering of securities to U.S. investors without the protection of the securities laws. The written materials must include a legend explicitly stating that the materials are not an offer of securities in the United States, and that no money or other consideration is being solicited through the materials. The issuer or selling security holder also must state if it intends to register any part of the offering in the United States. In addition to these legending requirements, issuers and selling security holders may not include a purchase order or coupon with the written materials.

Although some commenters contended that these requirements are unnecessary and burdensome, the Commission has determined that these requirements are necessary to safeguard the safe harbor from potential abuse. The burdens imposed are minimal, and enable the Commission to adopt an objective approach that should reduce needless barriers to U.S. press participation in offshore press activities with minimal burden.

The Tender Offer safe harbor contains similar Written Materials Requirements. Bidders for the securities of foreign private issuers and the foreign target companies must comply with these requirements when they release written press-related materials under this safe harbor. The materials must include a legend stating that the materials should not be construed as extending a tender offer in the United States, and that no money or other consideration is being solicited through the materials. If the bidder intends to extend the tender offer in the United States in the future, the written materials must include a statement to that effect. In addition, no coupons or means of tendering securities must be included with the materials.

The requirements under both safe harbors are intended to protect U.S. investors from potential use of the safe harbors as a means of circumventing the protections provided by the federal securities laws. The Commission does not consider these requirements to be unduly burdensome, especially in light of the important investor protections they provide and the benefits provided by the new safe harbors. Moreover, each issuer can engage in its own cost-benefit analysis to determine whether the burdens imposed by the legending and coupon conditions preclude reliance on the safe harbors.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604 regarding the new rule and amendments. The rule and amendments are intended to provide companies with greater certainty in determining when journalists, both foreign and domestic, may have access to offshore press conferences, meetings with company representatives conducted offshore, or press materials released offshore without violating the U.S. federal securities laws.

The rule and amendments should eliminate an unintended and potentially harmful consequence of the Securities Act's regulation of offering publicity. Currently, these regulations have been interpreted to deny U.S. journalists access to the offshore press activities of foreign issuers. This practice may harm U.S. investors because they eventually receive the same information, but on a delayed basis. The rule and amendments should remedy this unintended and harmful consequence.

The new rule and amendments will not impose any reporting, recordkeeping or other compliance burdens other than the Written Materials Requirements, which only apply to those issuers that choose to rely on the safe harbors. Although the Written Materials Requirements will impose certain legending requirements on written materials released offshore for those wishing to rely on the safe harbors, the Commission does not consider these requirements to be unduly burdensome on small businesses. A small issuer will make its own determination of whether the requirements would impose too much of a burden to make reliance on

the safe harbors useful to it. As a result, the Commission does not consider the rule and amendments unduly burdensome on small businesses.

The term ''small business,'' as used in reference to an issuer for purposes of the Regulatory Flexibility Act, is defined by Rule 157[48] under the Securities Act as an issuer that had total assets of $5 million or less on the last day of its most recent fiscal year, and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act. When used in reference to an issuer other than an investment company, the term also is defined in Rule 0–10[49] of the Exchange Act as an issuer that had total assets of $5 million or less on the last day of its most recent fiscal year.

The Commission is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under Rule 0–10. Because the rule and amendments affect multinational offerings by foreign issuers in which there would be press interest, it is likely that most of these issuers would not satisfy the definition of ''small business.''

The Commission has considered different alternatives to the rule and amendments. However, alternatives for providing different means of compliance for small entities or for exempting small entities from the rule and amendments would be inconsistent with the Commission's statutory mandate of investor protection. The new rule and amendments are intended to facilitate U.S. press access to offshore press activities of all issuers, regardless of size, such that further distinctions between companies based on size would not be appropriate.

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the Proposing Release, but did not receive any comments that specifically addressed the IRFA.

VII. Statutory Basis for the Amendments

The amendments to the Securities Act rules are being adopted pursuant to Sections 3, 4, 5 and 19 of the Securities Act as amended, and as required by Pub. L. No. 104–290, § 109, 110 Stat. 3416 (1996). The amendment to the Exchange Act rule is being adopted pursuant to Sections 14(d), 14(e) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

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

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

The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.135d [Added]

2. Section 230.135d is added and reserved.

3. By adding § 230.135e to read as follows:

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.

(a) For the purposes only of Section 5 of the Act [15 U.S.C. 77e], an issuer that is a foreign private issuer (as defined in § 230.405) or a foreign government issuer, a selling security holder of the securities of such issuers, or their representatives will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

Note to Paragraph (a)(1): An offering will be considered not to be made solely in the United States under this paragraph (a)(1) only if there is an intent to make a bona fide offering offshore.

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press-related materials pertaining to transactions in which any of the securities will be or are being offered in the United States satisfy the requirements of paragraph (b) of this section.

(b) Any written press-related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press-related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(3) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press-related materials.

(c) For the purposes of this section, ''United States'' means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 230.502 [Amended]

4. By amending § 230.502 to remove the period at the end of paragraph (c)(2) and to add the following: ''; *Provided further,* that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.''

Preliminary Note 7 [Amended]

5. By amending Preliminary Note 7 following the undesignated heading ''Regulation S'' and before § 230.901 to add the following after the first sentence: ''Where applicable, issuers and bidders may also look to § 230.135e and § 240.14d–1(c) of this chapter.''

6. By amending § 230.902 to add paragraph (b)(8) to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed Selling Efforts.* * * *

(8) Notwithstanding paragraph (b)(1) of this section, providing any journalist

[48] 17 CFR 230.157.

[49] 17 CFR 240.0–10.

with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed ''directed selling efforts'' if the requirements of § 230.135e are satisfied.

* * * * *

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

7. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

8. By amending § 240.14d–1 by redesignating paragraphs (c) and (d) as paragraphs (e) and (f), and adding paragraphs (c) and (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act [15 U.S.C. 78n(d)(1) through 78n(d)(7)], Regulation 14D promulgated thereunder (§§ 240.14d–1 through 240.14d–10), and §§ 240.14e–1 and 240.14e–2 shall not apply by virtue of the fact that a bidder for the securities of a foreign private issuer, as defined in § 240.3b–4, the subject company of such a tender offer, their representatives, or any other person specified in § 240.14d–9(d), provides any journalist with access to its press conferences held outside of the United States, to meetings with its representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed, if:

(1) Access is provided to both U.S. and foreign journalists; and

(2) With respect to any written press-related materials released by the bidder or its representatives that discuss a present or proposed tender offer for equity securities registered under Section 12 of the Act [15 U.S.C. 78*l*], the written press-related materials must state that these written press-related materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company. If the bidder intends to extend the tender offer in the United States at some future time, a statement regarding this intention, and that the procedural and filing requirements of the Williams Act will be satisfied at that time, also must be included in these written press-related materials. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, these written press-related materials.

(d) For the purpose of § 240.14d–1(c), a bidder may presume that a target company qualifies as a foreign private issuer if the target company is a foreign issuer and files registration statements or reports on the disclosure forms specifically designated for foreign private issuers, claims the exemption from registration under the Act pursuant to § 240.12g3–2(b), or is not reporting in the United States.

* * * * *

Dated: October 10, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27523 Filed 10–16–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 702

RIN 1215–AB17

Longshore Act Civil Money Penalties Adjustment

AGENCY: Office of Workers' Compensation Program, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On July 2, 1997, the Department of Labor published a proposal to amend various provisions of the regulations implementing the Longshore and Harbor Workers' Compensation Act (LHWCA). More specifically, the amendments, which are now being published in final with only minor word changes in §§ 702.204 and 702.236, will increase the maximum civil penalties that may be assessed under the LHWCA as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA).

EFFECTIVE DATE: The rule is effective on November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph F. Olimpio, Director for Longshore and Harbor Workers' Compensation, Employment Standards Administration, Room C–4315, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 219–8721.

SUPPLEMENTARY INFORMATION: The LHWCA authorizes the assessment of a civil money penalty in three situations: (1) Where an employer fails to file a report within sixteen days of the final payment of compensation, it shall be assessed a $100.00 civil penalty (LHWCA, section 14(g)); (2) where an employer, insurance carrier, or self-insured employer knowingly and willfully fails to file any report required by section 30, or knowingly or willfully makes a false statement or misrepresentation in any required report, the employer, insurance carrier, or self-insured employer shall be assessed a civil penalty not to exceed $10,000.00 (LHWCA, section 30(e)); and (3) where an employer is found to have discriminated against an employee because the employee had claimed or attempted to claim compensation, or has testified or is about to testify in proceedings under the LHWCA, the employer shall be liable for a civil penalty of not less than $1,000.00 or more than $5,000.00 (LHWCA, section 49). The DCIA, amending the FCPIAA, requires each agency to issue regulations adjusting the amount of civil money penalties they may levy. The DCIA requires that the civil money penalties be adjusted by a cost-of-living increase equal to the percentage, if any, by which the Department of Labor's Consumer Price Index for all-urban customers (CPI) for June of the calendar year preceding the adjustment exceeds the June CPI for the calendar year in which the civil penalty amount was last set or adjusted. Due to inflation since the LHWCA civil money penalties were last set or adjusted, the increase will, in every case, be the maximum 10% initially permitted under the DCIA. The adjusted civil penalties will apply only to violations occurring after the regulations become effective.

The Department did not receive any comments concerning the substance of its proposal. It did, however, receive a letter from the Chief Counsel of the Office of Advocacy at the Small Business Administration requesting clarification on whether the expected increase in the amount to be collected under the revised regulations is $2,500.00 in the aggregate, or $2,500.00 per case. Under the revised rules, the Department expects to collect an additional $2,500.00 for all cases in