may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) This amendment becomes effective on April 21, 1997.

Issued in Renton, Washington, on March 11, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–6717 Filed 3–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

## 14 CFR Part 71

**[Docket No. 96–ACE–22]**

## Amendment to Class E Airspace, Alliance, NE

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The direct final rule, published on January 14, 1997, amends the Class E airspace area at Alliance Municipal Airport, Alliance, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System. The effect of the direct final rule is to provide additional controlled airspace for aircraft departing Alliance Municipal Airport.

**EFFECTIVE DATE:** May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA published the direct final rule with a request for comments in the Federal Register on January 14, 1997 (62 FR 1828). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such as adverse comment, was received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 1997.

Herman J. Lyons, Jr.,

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 97–6399 Filed 3–17–97; 8:45 am]

**BILLING CODE 4910–13–M**

## 14 CFR Part 71

**[Docket No. 96–ACE–24]**

## Amendment to Class E Airspace, Sidney, NE

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The direct final rule, published on January 14, 1997, amends the Class E airspace area at Sidney Municipal Airport, Sidney, NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System. The effect of the direct final rule is to provide additional controlled airspace for aircraft departing Sidney Municipal Airport.

**EFFECTIVE DATE:** May 22, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA published the direct final rule with a request for comments in the Federal Register on January 14, 1997 (62 FR 1827). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on May 22, 1997. No adverse comments were received, and thus this document confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 1997.

Herman J. Lyons, Jr.,

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 97–6398 Filed 3–17–97; 8:45 am]

**BILLING CODE 4910–13–M**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 210 and 240

**[Release No. 34–38387; IC–22553; FR–49; File No. S7–20–96]**

**RIN 3235–AG70**

## Implementation of Section 10A of the Securities Exchange Act of 1934

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting revisions to its rules to implement the reporting requirements in section 10A of the Securities Exchange Act of 1934 (the ''Exchange Act''). Section 10A requires, among other things, that the auditor of an issuer's financial statements report to the issuer's board of directors certain uncorrected illegal acts of the issuer, and that the issuer notify the Commission that it has received such a report. If the issuer fails to provide that notice, the auditor is required by section 10A to furnish directly to the Commission the report given to the Board. The amendments to the Commission's Exchange Act Rules implement those reporting requirements. The Commission also is adopting revisions to Regulation S–X to conform the definition of ''audit'' in that regulation with the wording in section 10A.

**EFFECTIVE DATE:** The rule revisions are effective April 17, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Robert E. Burns or W. Scott Bayless, at (202) 942–4400, Office of the Chief Accountant, Mail Stop 11–3, or Kathleen Clarke, at (202) 942–0724, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to its Exchange Act Rules, 17 CFR 240, by adding Rule 10A–1, and Regulation S–X, 17 CFR 210, by revising Rule 1–02.

I. Background

Title III to the Private Securities Litigation Reform Act of 1995 (the ''Reform Act''), Public Law No. 104–67, enacted on December 22, 1995, added section 10A to the Exchange Act. As discussed below, section 10A requires that each audit under the Exchange Act [1] include procedures regarding the detection of illegal acts, the identification of related party transactions, and the evaluation of the issuer's ability to continue as a going concern. Section 10A also codifies certain professional auditing standards regarding the detection of illegal acts [2] by issuers and imposes expanded obligations on auditors [3] to report in a timely manner certain uncorrected illegal acts to an issuer's board of directors. It further requires the issuer, or if the issuer fails to do so then the auditor, to provide information regarding the illegal act to the Commission.

On August 22, 1996, the Commission published for comment proposed revisions to its rules to implement the reporting requirements set forth in section 10A and to amend the definition of ''audit'' in Regulation S–X to conform with the provisions of that section.[4] The Proposing Release contains a discussion of each paragraph of section 10A. Interested parties may wish to refer to the Proposing Release for additional background information.

More specifically, section 10A(a) provides that each audit required by the Exchange Act of issuers' financial statements include, ''in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—''

1. Procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

2. Procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

3. An evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern during the ensuing fiscal year.[5]

Certain procedures in each of these three areas already are required by generally accepted auditing standards (''GAAS'')[6] in the United States and are further codified in the *Statements on Auditing Standards* (''SAS'')[7] adopted by the Auditing Standards Board (''ASB''), the senior technical body for auditing matters of the American Institute of Certified Public Accountants (''AICPA'').[8]

In addition to the requirement in section 10A(a) that auditors perform procedures designed to enhance the detection of fraudulent financial reporting, section 10A(b) contains provisions that would require an auditor to report directly to the Commission certain detected illegal acts if the issuer fails to do so.

Under section 10A(b), if, while conducting the audit of the issuer's financial statements, the auditor becomes aware of information indicating that an illegal act (whether or not material to the financial statements) has occurred or may have occurred, then the auditor would be required, in accordance with GAAS, ''as may be modified or supplemented from time to time by the Commission,'' to determine whether it is ''likely'' that an illegal act has occurred and, if so, its possible effect on the financial statements (including any contingent monetary effects, such as fines, penalties, and damages).[9] The auditor would be required to inform the issuer's management of the illegal act ''as soon as practicable.'' In addition, the auditor must assure him/herself that the issuer's board of directors is adequately informed, by management or otherwise, of any detected illegal act.[10]

Although GAAS contains procedures for similar notification of illegal acts to managements and boards of directors,[11] section 10A(b) contains the additional requirement that these notifications occur ''as soon as practicable.'' [12]

After the auditor determines that the audit committee or the board of directors has been adequately informed of an illegal act and the auditor reaches

[1] Because section 10A applies to audits under the Exchange Act, it and Rule 10A–1 apply to audits of the financial statements of foreign private issuers that are required under that Act.

[2] Section 10A(f) defines the term ''illegal act'' broadly to mean ''an act or omission that violates any law, or any rule or regulation having the force of law.'' This definition is consistent generally with *Statement on Auditing Standards No. 54*, ''Illegal Acts by Clients,'' ¶ 2 (January 1, 1989), AU § 317.02, which states, ''the term illegal acts * * * refers to violations of laws or governmental regulations.''

[3] For the purpose of this release, the term ''auditor'' refers to any independent public or certified public accountant who is performing or has performed an audit of a registrant's financial statements and whose audit report has or will be filed with the Commission in accordance with the federal securities laws or the Commission's regulations. *See, e.g.*, sections 12(b)(1) (J) and (K), 13(a)(2), and 17(e) of the Exchange Act, 15 U.S.C. 78*l*(b)(1) (J) and (K), 78m(a)(2), and 78q(e), and the Commission's Regulation S–X, 17 CFR § 210. The term ''independent accountant'' is used in the regulatory text in order to be consistent with existing provisions in Regulation S–X.

[4] Securities Exchange Act Release No. 37594, Investment Company Act Release No. 22162, File No. S7–20–96 (August 22, 1996) [61 FR 45730] (the ''Proposing Release'').

[5] Section 10A(a) (1), (2), and (3).

[6] In February 1941, the Commission amended Rule 2–02 of Regulation S–X, 17 CFR § 210.2–02, to require that the independent accountant state in his or her report ''whether the audit was made in accordance with generally accepted auditing standards * * *'' Accounting Series Release No. 21 (February 5, 1941). In this release, the Commission defined ''generally accepted auditing standards'' to mean the application of ''generally recognized normal auditing procedures'' with professional competence by properly trained persons. The Commission defined ''generally recognized normal auditing procedures'' to be those normally employed by skilled accountants and those prescribed by authoritative bodies dealing with the subject of auditing, such as accounting societies and governmental bodies having jurisdiction in the area. *Id.* Following this addition to the Commission's rules, the relevant professional committee at the time, the Committee on Auditing Procedure, began a study to determine which auditing standards should be included within ''GAAS.'' In 1948, the membership of the predecessor organization to the American Institute of Certified Public Accountants (''AICPA'') approved ten standards as constituting GAAS. *See*, AICPA, Codification of Statements on Auditing Standards, AU § 150.02. These ten standards are supplemented by *Statements on Auditing Standards*, which currently are issued by the Auditing Standards Board of the AICPA.

[7] Currently effective *Statements on Auditing Standards* are published by the American Institute of Certified Public Accountants in the *Codification of Statements on Auditing Standards*. Provisions in the Codification are designated as ''AU § __.'' For standards addressing those procedures mandated by section 10A, *see* SAS 54, ''Illegal Acts by Clients'' (January 1, 1989), AU § 317; SAS 45, ''Related Parties'' (September 30, 1983), AU § 334; and SAS 59, 64, and 77 *reprinted in* ''The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern'' (January 1, 1989), AU § 341. *See also* SAS 53, ''The Auditor's Responsibility to Detect and Report Errors and Irregularities'' (January 1, 1989), AU § 316. The ASB recently adopted a revision to SAS 53, which will be entitled ''Consideration of Fraud in a Financial Statement Audit'' and designated as SAS 82. This new standard should be published in Spring 1997 and will be applicable to the audits of 1997 financial statements.

[8] The ASB's 15 members serve on a part-time basis and are appointed for one year terms that may be extended for up to three years.

[9] Section 10A(b)(1)(A). *See*, SAS 54, ¶¶ 10–15, AU § 317.10-.15. Paragraph 11 of SAS 54 sets forth additional audit procedures that might be necessary once the auditor becomes aware of a possible illegal act.

[10] Section 10A(b)(1)(B). See, SAS 54, ¶ 17, AU § 317.17.

[11] *See*, SAS 54, ¶¶ 10 and 17, AU § 317.10 and .17.

[12] The addition of this time period reflects the original legislative efforts in this area to provide an earlier warning to the SEC of registrants' potential illegal acts than may occur under the current Form 8-K procedures, *see* note 20 *infra*, and in audit reports. *See* H.R. Rep. No. 102–890, 102d Cong., 2d Sess. 3 (1992), which contained the predecessor legislation to Section 10A and stated:

This legislation amends the Securities Exchange Act of 1934 (Exchange Act) to improve fraud detection and disclosure with respect to public companies by codifying auditing standards in certain specified areas and by providing a mechanism for earlier warning to the Securities and Exchange Commission of certain illegal acts by registrants.

three specified conclusions, the auditor is required by section 10A(b)(2) to report those conclusions directly to the board of directors ''as soon as practicable.'' The three conclusions set forth in section 10A(b)(2) that trigger the auditor's obligation to report to the board are that:

1. The illegal act has a material effect [13] on the issuer's financial statements,

2. Senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act, and

3. The failure to take remedial action is reasonably expected to warrant either a departure from the auditor's standard audit report,[14] when made, or the auditor's resignation from the audit engagement.[15]

If the board of directors receives a report that the auditor has reached these conclusions, then the board has one business day to notify the Commission that it received such a report. If the auditor does not receive a copy of the board's notice to the Commission within that one business day period, then by the end of the next business day the auditor is required to furnish directly to the Commission a copy of the report given to the board (or the documentation of any oral report [16]).[17] The auditor's resignation from the audit engagement does not negate the auditor's obligation to furnish his or her report to the Commission in these circumstances.[18]

## II. Discussion of Rule Amendments

### *A. Rule 10A–1.*

Rule 10A–1 is based on the premise that the notices and reports under section 10A are to assist the Commission in performing its enforcement responsibilities and, therefore, will be non-public. Disclosure to the public of issuers' illegal acts will continue to be made in modified audit reports [19] or, when the auditor has resigned, been dismissed, or elected not to stand for re-election, on Form 8–K [20] under the Exchange Act and on Form N–SAR [21] under the Investment Company Act of 1940 (the ''Investment Company Act''), among others.

In testifying on prior bills that contained the same reporting requirements, the Commission stated, ''[W]e anticipate that reports filed under section 10A would be confidential and exempt from disclosure under the Freedom of Information Act.'' [22] The Commission further noted,

> Premature disclosure of the issuer and auditor reports could, among other things, interfere with the Commission's investigation, deprive the issuer or other persons of the right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, or disclose a confidential source. In addition, issuer and auditor reports under Section 10A might contain confidential commercial or financial information exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4).[23]

The Commission's testimony also states that the direct reporting provisions in the bill might provide an earlier warning of certain illegal acts that could allow the Commission to begin enforcement investigations at an earlier date.[24]

Accordingly, Rule 10A–1 provides that section 10A notices provided by the board and reports submitted by the auditor will be non-public and exempt from disclosure under the Freedom of Information Act (''FOIA'') to the same extent as the Commission's investigative records.[25]

Commentators responding to the Proposing Release supported the position that reports and notices under section 10A should be non-public. Some suggested, however, that proposed Rule 10A–1 was unclear as to the availability of FOIA exemptions, in addition to the exemptions for investigative records, for the information contained in these notices and reports. An instruction has been added to Rule 10A–1(c), therefore, specifically to notify issuers and auditors that they may apply for confidential treatment under additional FOIA exemptions in accordance with the Commission's normal procedures.[26]

Despite the confidential nature of the reports under section 10A, these reporting requirements should improve the quality of public disclosures in

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[13] The auditor should consider both the quantitative and qualitative materiality of the act, including contingent liabilities that might be created by the illegal act. *See, e.g.*, SAS 54, ¶ 13, AU § 317.13, and SAS 47, ''Audit Risk and Materiality in Conducting an Audit,'' ¶ 6 (June 30, 1984), AU § 312.06.

[14] *See*, SAS 58, ''Reports on Audited Financial Statements,'' ¶ 10 (January 1, 1989), AU § 508.10, for a general discussion of the circumstances that may require the auditor to depart from the standard report and the types of opinions, other than the standard report, that may be expressed by the auditor in various circumstances.

[15] Section 10A(b)(2) (A), (B), and (C). *See generally*, SAS 54, ¶¶ 18–22, AU § 317.18–.22.

[16] For documentation requirements under GAAS, *see, e.g.*, SAS 54, ¶ 17, AU § 317.17, and SAS 61, ''Communication with Audit Committees,'' ¶ 3 (January 1, 1989), AU § 380.03.

[17] Section 10A(b)(3).

[18] Section 10A(b)(4).

[19] For the effect of illegal acts on the audit report, see, SAS 53, ¶¶ 26 and 27, AU § 316.26 and .27, and SAS 54, ¶¶ 18–21, AU § 317.18–.21. *See generally*, SAS 58, 64, and 79 *reprinted in Reports on Audited Financial Statements* (January 1, 1989), which describes the standard report and the various opinions that may be reflected in the auditor's report. SAS 58, ¶¶ 7–10, AU § 508.07–.10.

[20] Item 4 of Form 8–K, 17 CFR § 249.308, Item 304 of Regulation S–K, 17 CFR § 229.304, and Item 304 of Regulation S–B, 17 CFR § 228.304. In summary, these provisions state that a registrant must file a Form 8–K, providing the information required by item 4 of that form, within five business days of the date that the registrant's auditor (or an independent accountant upon whom the auditor expressed reliance in its audit report regarding a significant subsidiary) resigns, declines to stand for re-election, or is dismissed, and within five business days of the date a new auditor is engaged. The registrant is to ask the former auditor to provide the registrant with a letter indicating whether the former auditor agrees with the disclosures in the Form 8–K that reports the termination of the audit engagement and, if not, the respects in which the auditor disagrees. This letter is to be filed with the Commission as an exhibit by amendment to the registrant's Form 8–K within 10 business days of the date that the Form 8–K was filed.

The registrant's Form 8–K must state, among other things: whether the former auditor resigned, was dismissed, or declined to stand for re-election and the date thereof; whether the auditor modified his or her report on the registrant's financial statements for either of the last two fiscal years and, if so, the nature of the modification; whether the decision to change auditors was recommended or approved by the audit committee or board of directors; whether, in connection with the audits of the financial statements for the two most recent fiscal years, and any subsequent interim period, there were any disagreements between the auditor and the registrant on any matter of accounting principles or practices, auditing scope or procedure, or financial statement disclosure. The Form 8–K also must provide disclosure of any instance within the applicable time period where the former auditor advised the registrant that (1) The internal controls necessary for the registrant to develop reliable financial statements did not exist, (2) information had come to the auditor's attention that led him or her no longer to be able to rely on management's representations, or that made the auditor unwilling to be associated with the registrant's financial statements, (3) there was a need to expand significantly the scope of the audit and, due to the auditor's resignation or for any other reason, the scope was not expanded, or (4) information had come to the auditor's attention affecting the reliability of past audit reports or financial statements and the issue had not been resolved to the auditor's satisfaction prior to the auditor's resignation, dismissal, or declination to stand for re-election.

[21] Sub-item 77K of Form N–SAR, 17 CFR § 274.101, requires investment companies filing Form N–SAR to provide the information required by item 4 of Form 8–K. Sub-item 77K of Form N–SAR notes that notwithstanding the requirements in Form 8–K to file more frequently, registrants need only file such information semi-annually in accordance with the requirements of Form N–SAR.

[22] Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, *Concerning H.R. 574, The Financial Fraud Detection and Disclosure Act*, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess., 32 (February 18, 1993).

[23] *Id.*, at 32 n. 36.

[24] *Id.*, at 31.

[25] Rule 10A–1(c). *See also* 5 U.S.C. 552(b)(7), which exempts from disclosure certain ''records or information compiled for law enforcement purposes.''

[26] *See* 17 CFR § 200.83.

Forms 8–K and N–SAR and in audit reports on issuers' financial statements, because it is unlikely that issuers and auditors will make public disclosures that are incompatible with the confidential reports made to the Commission. Also, the direct reporting requirements in section 10A should give auditors additional leverage to prompt management to correct illegal acts and to make appropriate adjustments in their financial statements.

Rule 10A–1 designates the Commission's Office of the Chief Accountant (''OCA'') as the appropriate office to receive the notice provided by any issuer under section 10A(b)(3) [27] and any reports provided by auditors under section 10A(b)(3) or 10A(b)(4).[28] No commentators objected to OCA as the designated party to receive these notices and reports. OCA expeditiously will forward copies of the notice or report to all appropriate offices and divisions within the Commission. The notice or report may be provided to other authorities, as appropriate.[29]

Delivery of the notice or report to OCA may occur under Rule 10A–1 in any manner, provided the notice or report is received by OCA within the statutory time period.[30] Currently, the most timely manner of delivery may be through submission of a facsimile,[31] telegraph, or personal delivery. Issuers should be aware that providing such information on the Edgar filing system, however, may result in the information becoming available to the public. In the future, procedures may be developed for issuers and auditors to deliver confidential information directly to OCA via electronic mail. Rule 10A–1 would permit use of such means of delivery.[32]

Rule 10A–1(a) also sets forth the required contents for a issuer's notice to the Commission. This notice must be in writing and identify the issuer and the auditor, and state the date the auditor made its report to the board. Under the rule proposal, the issuer also would provide a summary of the report. The summary would describe the act and the potential impact of that act on the issuer's financial statements. This information is consistent with the requirement under GAAS that the auditor's communication with the issuer's audit committee ''should describe the act, the circumstances of its occurrence, and the effect on the financial statements.'' [33] One commentator suggested that issuers have the option of providing either the summary of the independent accountant's report, as proposed, or directly providing that report to OCA. This commentator noted, however, that if an issuer submits the independent accountant's report to OCA a question may arise regarding the availability to the independent auditor of the section 10A(c) protection against civil liability for the findings, conclusions, or statements in his or her report.[34] As adopted, Rule 10A–1 incorporates the commentator's suggestion and permits issuers the option of providing either a summary of the independent accountant's report or a copy of that report. To clarify the application of the section 10A(c) safe harbor, Rule 10A–1 now provides that the safe harbor available to auditors shall apply not only when the report is furnished to OCA by the auditor but also when it is provided by the issuer.

As had been proposed, Rule 10A–1(a) also specifically permits an issuer to include additional information with the required notice to the Commission regarding the issuer's view of, and response to, the section 10A report it has received from the auditor.

Regarding reports filed by auditors, Rule 10A–1(b) specifies that if the report does not identify clearly both the issuer and the auditor, then the auditor must attach that information to the report submitted to OCA.

Rule 10A–1 makes clear that providing the notice or report in accordance with section 10A and Rule 10A–1 does not, in any way, affect the obligations of the issuer and the auditor to file and make all applicable public disclosures required by the Commission's rules, including, without limitation, Forms 8–K and N–SAR, and of the auditor to comply with GAAS reporting requirements.[35] Similarly, Rule 10A–1 states that the confidential nature of the notice and the report to the Commission does not diminish an issuer's or auditor's obligations to make full disclosures required by the Commission's rules, forms, reports, or disclosure items, or by applicable professional standards.

In response to the Proposing Release, the Commission received additional comments requesting it to interpret or amend certain additional provisions of section 10A. For example, some commentators suggested that the Commission amend the statutory definition of ''illegal act'' to follow more closely the definition in the auditing literature.[36] Another commentator recommended that auditors be required to report all illegal acts to the board of directors (as opposed to management), not merely those acts that are material to the financial statements. One commentator suggested that the Commission extend the protection for auditors against civil liability found in section 10A(c) for statements in reports submitted to the Commission under section 10A(b), to statements made by the auditor in additional documents and in other contexts. Commentators also requested that the Commission extend the one-business-day reporting periods in the statute to five business days. Such comments, however, are beyond the scope of this rulemaking proceeding and, in some cases, request that the Commission promulgate rules contrary to the statutory mandate of section 10A.

*B. Rule 1–02(d)*

The Commission is adopting the proposed amendment to conform the definition of ''Audit (or examination)'' in Rule 1–02(d) of Regulation S–X with section 10A. The amendment notes that audits of the financial statements of Commission issuers should be performed ''in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission.'' The purpose of this amendment is to alert auditors and issuers to the possibility that additional

[27] Rule 10A–1(a).

[28] Rule 10A–1(b).

[29] *See* 17 CFR § 240.24c–1.

[30] Rule 10A–1 (a) and (b).

[31] The phone number for OCA's facsimile machine currently is (202) 942–9656. Such phone numbers, however, are subject to change without notice and registrants and auditors should verify the accuracy of the number before use.

[32] A similar provision applies to auditors of broker-dealers. *See* Rule 17a–5(h)(2) under the Exchange Act, 17 CFR § 240.17a–5(h)(2), which states that if, during the course of audit or interim work, the auditor determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or certain other practices and procedures, then the auditor shall call those inadequacies to the attention of the chief financial officer of the broker-dealer, who has the obligation to notify the Commission and the designated examining authority within 24 hours thereafter. If the auditor does not receive a copy of that notice within that 24 hour period, or if the auditor disagrees with the statements in the notice, then the auditor must inform the Commission and the designated examining authority of the material inadequacy within the next 24 hours.

[33] SAS 54, ¶ 17, AU § 317.17.

[34] Section 10A(c) limits auditors' liability in private rights of action for ''any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rule promulgated pursuant thereto''; paragraphs (3) and (4) of subsection (b) set forth the issuer and auditor reporting obligations.

[35] In addition, one of the membership requirements of the SEC Practice Section of the AICPA is that members notify registrants in writing of the cessation of an auditor-client relationship. The member also is required to send a copy of that notification to the Commission's Office of the Chief Accountant.

[36] *See* SAS 54, ¶ 2, AU § 317.02, discussed *supra* note 2.

audit procedures, beyond those required by GAAS, may be required by the Commission in certain circumstances.

Some commentators objected to the proposed revision of Rule 1–02(d) on the ground that the Commission's statutory authority to modify or supplement GAAS is limited to the three circumstances expressly set forth in section 10A; i.e., illegal acts, related party transactions, and going concern evaluations.

On the contrary, it has long been recognized by Congress and the Commission, that the Commission has broad authority to establish auditing requirements for public companies and their independent audit firms.[37] This implied authority is based on, among other things, (1) the Commission's authority to prescribe the reports to be filed with it,[38] (2) the provisions in the securities laws that require, or grant the Commission the authority to require, that certain financial statements be ''certified * * * by independent public accountants'' [39] and the Commission's authority to define technical and trade terms such as ''certified,'' [40] and (3) the Commission's authority to ensure that the representations in audit reports and the procedures behind those reports fulfill their statutory function.[41] In enacting the Reform Act, Congress clearly intended to preserve the Commission's existing implied authority regarding auditing standards, as evidenced by both the preservation clause in section 10A(e) and the Conference Committee Report.[42]

In any event, the revision to Rule 1–02(d) is not intended to change the substantive scope of the Commission's authority to set auditing standards, or to resolve any dispute that may arise over the scope of that authority in particular circumstances. Instead, this amendment is intended to provide adequate and fair notice to all parties concerned that the Commission, as well as appropriate professional authorities, may issue guidance to be considered and adhered to in the performance of audits under the Exchange Act.

As a general matter, the Commission plans to continue its practice of looking to the private sector standard setting bodies designated by the accounting profession to provide leadership in establishing and improving GAAS. Currently, the Commission staff works closely with the ASB. The staff, among other things, attends ASB meetings, reviews and provides the ASB with comments on draft Statements on Auditing Standards, and has periodic meetings with ASB representatives to discuss items on the ASB agenda and other matters of mutual concern.

The Commission has no present intention to write any new auditing standards unless it determines that the ASB, or any subsequently established standard setting organization, is unable or unwilling to address a significant auditing issue in an appropriate and timely manner. The Commission will exercise its discretion in determining the appropriateness and timeliness of the private sector response, considering the nature of the issue and other factors. Should Commission action be deemed necessary, the Commission will act promptly when required by the public interest or for the protection of investors.[43]

## III. Investment Companies

Section 10A and Rule 10A–1 apply to all audits required pursuant to the Exchange Act, including those prepared on behalf of investment companies, which, among others, have reporting obligations under the Exchange Act.[44]

In the proposing release, the Commission requested comment regarding whether the reporting requirements under Rule 10A–1 should be modified to reflect the specific operations of investment companies. No commentators, however, addressed this topic. Accordingly, the Commission has determined that Rule 10A–1 will be adopted as proposed.

## IV. Required Findings Regarding Impact on Competition

In the Proposing Release, the Commission requested comments on whether the proposed amendments, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act of 1933 and the Exchange Act. One commentator addressed this issue, indicating that the reporting provisions of proposed Rule 10A–1 would not add to any such burden that might be imposed by section 10A, especially in

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[37] *See* Report by the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, *Federal Regulation and Regulatory Reform*, 94th Cong., 2d Sess., 38 (October 1976), which states, in part, that the Commission had not then ''exercised fully its statutory authority to remedy deficiencies in generally accepted auditing standards''; *Report on the Activity of the Committee on Energy and Commerce for the 100th Congress*, House Report 100–1114, 100th Cong., 2d Sess., 364 (Dec. 23, 1988), which states, ''As the primary Agency responsible for administering the Federal securities laws disclosure requirements, the SEC has broad authority to establish auditing and accounting requirements for public companies and independent audit firms''; and Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, *Concerning H.R. 547, The Financial Fraud Detection and Disclosure Act*, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103rd Cong., 1st Sess., 26–27 (Feb. 18, 1993), which states, in part, ''The Commission [is] prepared, should it prove necessary to fulfill its statutory mandate, to establish separate auditing standards that supplement or supplant ASB standards for SEC registrants.* * * In the same way the Commission has final authority over the establishment of new financial standards by the FASB, so too the Commission has final authority over the establishment of auditing standards to protect the public interest.''

[38] *See, e.g.*, § 13(b)(1) of the Exchange Act, 15 U.S.C. 78m(b)(1), which states, ''The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth.* * *''

[39] Items 25, 26, and 27 of Schedule A to the Securities Act of 1933, 15 U.S.C. 77aa (25), (26) and (27), and § 17(e) of the Exchange Act, 15 U.S.C. 78q, expressly require that audited financial statements be filed with the Commission. Sections 12(b)(1) (J) and (K) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78l and 78m, among others, authorize the Commission to require the filing of financial statements that have been audited by independent accountants. The Commission requires that certain financial statements be audited. *See, e.g.*, Article 3 of Regulation S–X, 17 CFR § 210–3–01 *et seq.*

[40] *See, e.g.*, § 19(a) of the Securities Act of 1933, 15 U.S.C. 77s(a), and § 3(b) of the Exchange Act, 15 U.S.C. 78c(b).

[41] *See generally* James F. Strother, *The Establishment of Generally Accepted Accounting Principles and Generally Accepted Auditing Standards*, 28 Vand. L. Rev. 201, 225 (1975), which states, ''The Commission's powers with regard to auditing are considerable, even though it lacks the express authority to prescribe auditing standards and procedures that it has in the case of accounting principles.''

In the past, the Commission has not found it necessary formally to exercise its implied power to set auditing standards. In the mid-1970s, however, the Commission proposed certain procedures for auditors' reviews of interim financial statements. *See* Securities Act Release No. 5579 (April 17, 1975), Accounting Series Release No. 177 (September 10, 1975), Securities Act Release No. 5612 (September 10, 1975). This rulemaking did not go forward when the predecessor to the ASB acted to establish similar review procedures, and Commission action became unnecessary.

[42] *See* H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess., 47 (Nov. 28, 1995), which states, in part, ''The Conference Committee does not intend to affect the Commission's authority in areas not specifically addressed by this provision.''

[43] The Statement of Managers, The Private Securities Litigation Reform Act of 1995, states, at 22, ''The Conference Committee intends for the SEC to have discretion, however, to determine the appropriateness and timeliness of the private sector response. The SEC should act promptly if required by the public interest or for the protection of investors.''

[44] *See* sections 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78m(a) and 78o(d), and section 30(a) of the Investment Company Act, 15 U.S.C. 80a–29(a). Form N–SAR requires investment companies to file information with the Commission about their operations, including audited financial information. Rule 30a–1 under the Investment Company Act, 17 CFR § 270.30a–1, provides that investment companies filing annual reports on Form N–SAR are deemed to have satisfied the reporting requirements of sections 13(a) and 15(d) under the Exchange Act and section 30(a) under the Investment Company Act.

light of the non-public nature of the reports to be filed under the Rule.

The Commission has considered the proposed amendments in light of its responsibilities under section 23(a) of the Exchange Act[45] and concluded that the burdens on competition, if any, are necessary and appropriate in furtherance of the purposes of the Exchange Act, particularly section 10A.

## V. Cost/Benefit Analysis

The costs of complying with Rule 10A–1, which is intended to carry out the purposes of new section 10A of the Exchange Act, are expected to be de minimis. Such costs for an issuer may include converting the information in the auditor's report to the board into a notice that conforms to the rule and delivering that notice, via facsimile or otherwise, to OCA. Costs for the auditor may include assuring that the report to the board identifies the issuer, as required by the proposed rule, and the cost of delivering that report, via facsimile or otherwise, to OCA.

Benefits of compliance with Rule 10A–1 include an earlier warning to the Commission of possible illegal acts by issuers and potential improvements in public disclosures in Forms 8–K and N–SAR regarding changes in issuers' auditors and in audit reports that are modified due to issuers' illegal acts.

Commentators specifically addressing the issue indicated either that the anticipated benefits of Rule 10A–1 outweigh the associated costs, or that the minimal reporting requirements under Rule 10A–1 would not add to any burdens imposed by section 10A of the Exchange Act.

## VI. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') concerning Rule 10A–1 has been prepared in accordance with 5 U.S.C. 604. The FRFA notes that the rule is intended to implement the reporting requirements of section 10A of the Exchange Act as mandated by Congress. The rule will not impose any reporting requirements additional to those imposed by section 10A.

As discussed more fully in the FRFA, the rule will affect small entities, as defined by the Commission's rules, but only in the same manner as other entities. By statute, most issuers that fit the Commission's definitions of small entities are subject to a one-year delay in the effective date of section 10A, which makes section 10A (and accordingly Rule 10A–1) applicable to annual reports for any period beginning on or after January 1, 1997 (instead of January 1, 1996).

Regarding issuers, approximately 1,100 Exchange Act reporting companies satisfy the Commission's definition of ''small business;'' as of December 1995, approximately 5,200 broker-dealers were classified as small entities; and as of August 1995, approximately 1,770 active registered investment companies were considered small entities. Although some small auditors may be subject to the Rule 10A–1 reporting requirements, there is no specific definition of the term ''small auditor'' and information regarding auditors' revenues, earnings, and similar data is not publicly available.

There is no reliable way of determining how many small issuers or auditors will be required to file section 10A reports or notices each year concerning illegal acts so as to become subject to Rule 10A–1. It is expected, however, that OCA will receive very few issuer notices each year and even fewer auditor reports (which are filed only if an issuer fails to fulfill its reporting obligation).

The FRFA notes that alternatives for providing different means of compliance for small entities or for exempting small entities from the rule would be inconsistent with the statutory requirements of section 10A. The cost of complying with the rule should be de minimus, even for small entities, because the reporting requirements under section 10A and the rule are based on existing GAAS requirements. Moreover, the statute essentially requires only an earlier warning regarding matters that would otherwise be disclosed in Forms 8–K and N–SAR and in audit reports on issuers' financial statements.

The Commission received no comments on the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the proposing release, and no comment letters specifically addressed to the IRFA. Two commentators indicated that the anticipated benefits of Rule 10A–1 outweigh the associated costs, and that the minimal reporting requirements of Rule 10A–1 would not materially add to the burdens Congress chose to impose by enacting section 10A.

A copy of the analysis may be obtained by contacting Robert E. Burns, Chief Counsel, Office of the Chief Accountant, U.S. Securities and Exchange Commission, Mail Stop 11–3, 450 Fifth Street, N.W., Washington, D.C. 20549.

## VII. Paperwork Reduction Act

As set forth in the Proposing Release, proposed Rule 10A–1 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Accordingly, the Commission submitted the proposed rules to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d), and OMB approved that collection and assigned it control number 3235–0468. This is the final notice regarding the collection of information under Rule 10A–1.

The Supporting Statement to the Paperwork Reduction Act submission noted that Rule 10A–1 is intended to implement the reporting requirements found in recently enacted section 10A of the Exchange Act, and that the rule is expected to have a negligible effect on the annual reporting and cost burden of Commission registrants. As discussed above, the notice to be provided by the issuer would contain the minimum amount of information necessary to identify the issuer and the auditor, indicate the date the auditor provided the report to the board of directors as specified in section 10A, and summarize the report given to the board. The summary would be based on information required to be given to the board of directors under GAAS. The auditor's report, furnished only in the event that the issuer does not fulfill its reporting responsibilities, would consist only of the report given to the board of directors and, if necessary, additional information to identify clearly the issuer and the auditor.

Potential respondents are entities with reporting obligations under the Exchange Act and their auditors, although it is anticipated that the reporting requirements under section 10A rarely will be triggered. On those rare occasions when the reporting requirement is triggered, it is estimated that the total recordkeeping and reporting burden, beyond that directly required by the statute, would not exceed one hour per respondent.

As notices must be filed by an issuer within one day of receiving a report from its auditor, and the auditor must file its report (if necessary) the next day, there are essentially no recordkeeping or retention requirements.

Filing the notices and reports, when necessary, is required by section 10A of the Exchange Act and therefore is

[45] 15 U.S.C. 78w(a).

mandatory. As explained above, however, the notices and reports will be kept confidential while the Commission has an enforcement interest in the information contained in those notices and reports. In addition, requests for confidential treatment of such information may be made under 17 CFR 200.83.

The Commission received no comments in response to its request for comments, pursuant to 44 U.S.C. 3506(c)(2)(B), concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's estimate of the burden of the proposed collection of information; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

List of Subjects

*17 CFR Part 210*

Accounting, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 240*

Reporting and recordkeeping requirements, Securities.

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

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By revising § 210.1–02(d) to read as follows:

### § 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements, means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.

* * * * *

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

3. The authority citation for Part 240 is revised 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, 78j–1, 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.

* * * * *

4. By adding an undesignated center heading and § 240.10A–1 following § 240.10(b)–21 to read as follows:

Reports Under Section 10A

### § 240.10A–1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j–1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j–1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j–1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8–K, § 249.308 of this chapter, and Form N–SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of item 304 of Regulation S–B or item 304 of Regulation S–K, §§ 228.304 or 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be submitted to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) submitted to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office), then the

independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall submit that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is submitted to that Office.

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and under items 304(a)(2)(D) and 304(a)(3) of Regulation S–B, §§ 228.304(a)(2)(D) and 228.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are non-public and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and § 200.80(b)(7) of this chapter. Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

*Instruction to Paragraph (c)*

Issuers and independent accountants may apply for additional bases for confidential treatment for a notice, report, or part thereof, in accordance with § 200.83 of this chapter. That section indicates, in part, that any person who, pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, may request that the Commission afford it confidential treatment by reason of personal privacy or business confidentiality, or for any other reason permitted by Federal law.

By the Commission.

Dated: March 12, 1997.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–6712 Filed 3–17–97; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD07 97–008]**

**RIN 2115–AE46**

## Special Local Regulations; Miami Beach, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Miami Super Boat Race. The event will be held on April 20, 1997, 1000 feet off the Miami Beach shore from 12:30 p.m. EDT (Eastern Daylight Time) until 3:30 p.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations become effective at 11:30 a.m. and terminate at 4:30 p.m. EDT on April 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** QMC T.E. Kjerulff, Coast Guard Group Miami, Florida at (305) 535–4448.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective without publication of a notice of proposed rulemaking. Final environmental replies concerning these regulations were only received in this office in early February. Publishing a NPRM and delaying its effective date would be contrary to national safety interests, since immediate action is needed to minimize potential danger to the public due to an expected large concentration of participant and spectator craft.

Discussion of Regulations

Super Boat International Productions Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats, ranging in length from 24 to 50 feet, participating in the event. There will be approximately two hundred (200) spectator craft. The race will take place in the Atlantic Ocean 1,000 feet off the Miami Beach shore from Miami Beach Clock Tower to Atlantic Heights. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5.0 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for a total of 5 hours in a limited area.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B. of Commandant Instruction M16475.1B. In