

audits of financial statements filed with the Commission. The proposals, therefore, should enhance investor confidence in the audit process and in the quality of information available to them, and lead to a more efficient market.

Because of the nature of the proposed rules, we do not believe that they would impose any burden on competition. They prohibit equally all officers and directors of public companies (and persons acting under their direction) from improperly influencing the auditor.

As noted in the cost-benefit section, if section 303 of the Act and the proposed rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital. The possible effects of the proposed rules on efficiency, competition, and capital formation, however, are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VIII. Statutory Authority

We are proposing the new rules under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

Text of Proposed Rules and Amendments

List of Subjects in 17 CFR Part 240

Securities.

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

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

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

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

* * * * *

2. Section 240.13b2-2 is revised to read as follows:

§ 240.13b2-2 Issuer's representations and conduct in connection with the preparation of required reports and documents.

(a) No director or officer of an issuer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(i) Any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart; or

(ii) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(b)(1) No officer or director of an issuer, or any other person acting under the direction thereof, shall directly or indirectly take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that issuer that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

(2) For purposes of paragraphs (b)(1) and (c)(2) of this section, actions that "could, if successful, result in rendering such financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to fraudulently influence, coerce, manipulate, or mislead an auditor:

(i) To issue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, generally accepted auditing standards, or other standards);

(ii) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(iii) Not to withdraw an issued report; or

(iv) Not to communicate matters to an issuer's audit committee.

(c) In addition, in the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), or a business development company as defined in section 2(a)(48) of the

Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), no officer or director of the company's investment adviser, sponsor, depositor, trustee, or administrator (or, in the case of paragraph (c)(2) of this section, any other person acting under the direction thereof) shall, directly or indirectly:

(1)(i) Make or cause to be made a materially false or misleading statement; or

(ii) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(A) Any audit or examination of the financial statements of the investment company required to be made pursuant to this subpart; or

(B) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise; or

(2) Take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that investment company that are required to be filed with the Commission if that person knew or was unreasonable in not knowing that such action could, if successful, result in rendering such financial statements materially misleading.

Dated: October 18, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Radio Island, Beaufort, NC

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing regulations to establish a restricted area in the vicinity of Radio Island, Beaufort, North Carolina. These regulations will enable the Navy to enhance security for Navy property, vessels, and personnel. The

regulations are necessary to safeguard Navy vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions which may exist as a result of Navy use of the area.

DATES: Written comments must be submitted on or before November 25, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761-4618, or Mr. Scott McLendon, Corps of Engineers, Wilmington District, Regulatory Division, at (910) 251-4725.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the restricted area regulations in 33 CFR part 334 by adding § 334.435 which establishes a restricted area adjacent to Radio Island, between the Morehead City Channel and the Beaufort Channel, Beaufort, North Carolina. The public currently has unrestricted access to surrounding waters. To better protect vessels and personnel during loading and unloading operations, the Commander, Navy Region, Mid-Atlantic has requested the Corps of Engineers establish a Restricted Area which will enable the Navy to implement a waterside security program that is currently not available at the facility.

Procedural Requirements

A. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the

public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

D. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.435 is added to read as follows:

§ 334.435 Radio Island, Beaufort, North Carolina, Naval Restricted Area.

(a) *The area.* Beginning at a point at latitude 34°42'21" N., longitude 76°40'50.4" W.; thence southwesterly to latitude 34°42'20.4" N., longitude 76°40'53.4" W.; thence southeasterly to latitude 34°42'15" N., longitude 76°40'51.6" W.; thence southeasterly to latitude 34°42'13.6" N., longitude 76°40'49.4" W.; thence northeasterly to latitude 34°42'15.6" N., longitude 76°40'41.4" W.; thence northwesterly to latitude 34°42'22.8" N., longitude 76°40'44.4" W.; thence southwesterly to the point of beginning.

(b) *The regulation.* During those times when the U.S. Navy is conducting loading and unloading operations at the Radio Island Loading Ramp, no vessel or persons may enter the Restricted Area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or persons or agencies as he/she may designate.

Dated: September 11, 2002.

Michael G. Ensich,

Acting Chief, Operations Division, Directorate of Civil Works.

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Naval Air Station North Island, San Diego, CA

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of Proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to amend its regulations to establish a new restricted area in waters adjacent to the Naval Air Station North Island (NASNI), San Diego, California. This amendment will restrict activities by the public on the northeast side of the base. The regulations are necessary to safeguard Navy vessels and United States Government facilities from sabotage and other subversive acts, accidents, or incidents of a similar nature.

DATES: Written comments must be submitted by November 25, 2002.

ADDRESSES: Send comments to U.S. Army Corps of Engineers, ATTN: CECW-OR, 441 G Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC, at (202) 761-4618, or Mr. Russell L. Kaiser, Corps of Engineers, Los Angeles District, Regulatory Branch, at (213) 452-3293.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. V1) and chapter XIX, of the Army Appropriations Act of 1919