

area, we are also correcting those coordinates. In § 334.595(a) the coordinates of the northeast and southeast corner points of the restricted area are latitude 28°35.716' N, longitude 80°32.938' W and latitude 28°24.187' N, longitude 80°33.443' W, respectively.

#### List of Subjects in 33 CFR Part 334

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

■ Accordingly, 33 CFR part 334 is corrected by making the following correcting amendments:

#### 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. Revise paragraph (a) of § 334.595 to read as follows:

**§ 334.595 Atlantic Ocean off Cape Canaveral; 45th Space Wing, Cape Canaveral Air Force Station, FL.; Restricted Area.**

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, contiguous to the area offshore of Cape Canaveral Air Force Station, Florida. The area is bounded by a line connecting the following coordinates: Commencing from the shoreline at the northwest portion of the area, at latitude 28°35.008' N, longitude 80°34.448' W, thence directly to latitude 28°35.716' N, longitude 80°32.938' W, thence following the mean high water line at a distance of 1.5 nautical miles offshore proceed southerly to a point at latitude 28°24.187' N, longitude 80°33.443' W, thence proceeding westerly to terminate at a point on the shoreline at latitude 28°24.69' N, longitude 80°35.05' W.

\* \* \* \* \*

Dated: November 5, 2009.

**Michael G. Ensich,**

*Chief, Operations, Directorate of Civil Works.*

[FR Doc. E9-27487 Filed 11-13-09; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 206

[Docket ID FEMA-2009-0007]

RIN 1660-AA01

### Criminal and Civil Penalties Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive change, a proposed rule that increases the maximum civil monetary penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act from \$5,000 to \$5,500. The Federal Civil Penalties Inflation Adjustment Act of 1990 mandates this increase.

**DATES:** This final rule is effective December 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Erin McMunigal, Assistant Chief Counsel for Regulation & Policy, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (phone) 202-646-4097, or (e-mail) [Erin.McMunigal@dhs.gov](mailto:Erin.McMunigal@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive change, a proposed rule that increases the maximum civil penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5157(d), (“Stafford Act”), from \$5,000 to \$5,500. This increase is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990. Public Law 101-410, 104 Stat. 890 (Oct. 5, 1990), 28 U.S.C. 2461, note, (“Adjustment Act”) as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, sec. 31001, 110 Stat. 1321-373 (1996), as amended, Public Law 105-362, tit. XIII, sec. 1301(a), 112 Stat. 3293 (Nov. 10, 1998).

The Adjustment Act, as amended, requires each Federal agency to adjust by regulation the civil monetary penalties within its jurisdiction. FEMA’s civil penalties are mandated by section 314(d) of the Stafford Act, which provides, “any individual who knowingly violates any order or regulation under this Act shall be

subject to a civil penalty of not more than \$5000 for each violation.” 42 U.S.C. 5157(d). This provision is implemented in FEMA’s regulations at 44 CFR 206.14(d), promulgated in 1990. 55 FR 2288 (Jan. 23, 1990).

The Adjustment Act directs agencies to make the first such adjustment by October 23, 1996, and then at least once every four years thereafter. The Adjustment Act provides a cost-of-living adjustment formula and requires agencies to use this formula in recalculating the penalties. The formula reflects changes in the Department of Labor’s Consumer Price Index of all-urban consumers (CPI) in the years between adjustments. The Adjustment Act also establishes a staged method for rounding the calculated increase, and states that the first such increase of a civil monetary penalty may not exceed 10 percent of the penalty. A civil penalty is to be initially adjusted by the lesser of the Adjustment Act’s calculation or 10 percent of the current penalty.

Since the promulgation of 44 CFR 206.14(d), the CPI has increased by nearly 80 percent. However, this final rule is FEMA’s first adjustment of its civil penalty regulations since the passage of the Adjustment Act. As described above, the first increase may not exceed 10 percent of the original penalty amount. The original penalty amount was \$5,000, as set out in the Stafford Act and FEMA regulations, making the maximum allowable increase \$500. Thus, properly adjusted, the maximum civil penalty under section 314(d) of the Stafford Act and 44 CFR 206.14(d) will be \$5,500.

##### II. Discussion of Public Comments

FEMA published a Notice of Proposed Rulemaking on February 10, 1997. 62 FR 5957. FEMA received no substantive public comments.

##### III. Regulatory Requirements

###### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct 4, 1993), a “significant regulatory action” is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. This rule, increasing the Stafford Act’s civil monetary penalty by \$500, is not a significant regulatory action, and has not been reviewed by OMB.

###### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, FEMA has considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. FEMA certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because it will only affect those persons who knowingly violate regulations issued under the Stafford Act.

#### C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. This rule will not have the requisite economic impact and is not a discretionary regulatory action, so further analysis under the Unfunded Mandates Reform Act is not necessary.

#### D. Executive Order 13132, Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It will not preempt any State laws. In accordance with Section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

#### E. National Environmental Policy Act

FEMA’s regulations implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, at 44 CFR 10.8(d)(2), list the categories of actions that have no significant effect on the human environment and are therefore categorically excluded from the preparation of environmental impact statements and environmental assessments. Specifically, FEMA is not required to prepare such statements and assessments under 44 CFR 10.8(d)(2)(ii) for the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions, or, under 44 CFR 10.8(d)(2)(iv) for actions to enforce Federal, State, or local codes, standards,

or regulations. Since this rulemaking action will not have a significant effect on the human environment, it is categorically excluded from further NEPA review, and no environmental impact assessment has been prepared.

#### F. Executive Order 12898, Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to consider the “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations” to ensure that the programs do not “exclude persons (including populations) from participating in or getting the benefits of, or subject them to discrimination under such programs, policies, and activities.” This rule does not impact human health or the environment or discriminate according to race, color, or national origin because it uniformly increases the civil penalty of the Stafford Act in accordance with a statutory mandate. Therefore, the requirements of Executive Order 12898 do not apply to this rule.

#### G. Congressional Review of Agency Rulemaking

FEMA has complied with the Congressional Review of Agency Rulemaking Act, Public Law 104–121 sec. 801, 110 Stat. 847, 868 (1996), (“Congressional Review Act”), by sending this final rule to the Congress and to the Government Accountability Office. Since this rule is not a “major rule” within the meaning of the Congressional Review Act, the rule becomes effective without a Comptroller General’s report or an extended time for Congressional review.

#### H. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–20, is designed to minimize the burden of collecting and distributing information on any organization or individual affected by legislation. Implementing this final rule does not entail the collecting or distributing of information for the purposes of the Paperwork Reduction Act.

#### I. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### J. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### K. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rule would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

#### PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise § 206.14, paragraph (d) to read as follows:

#### § 206.14 Criminal and civil penalties.

\* \* \* \* \*

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation shall be subject to a civil penalty of not more than \$5,500 for each violation.

Dated: November 5, 2009.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9-27358 Filed 11-13-09; 8:45 am]

**BILLING CODE 9111-21-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09-2266; MB Docket No. 09-83; RM-11532]

### FM Table of Allotments, Dubois, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Lorenz E. Proietti, allots FM Channel 242C2 at Dubois, Wyoming, as that community's first transmission service. Channel 242C2 can be allotted at Dubois, Wyoming, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 km (3.8 miles) southwest of Dubois at the following reference coordinates: 43-29-59 North Latitude and 109-41-17 West Longitude.

**DATES:** Effective December 16, 2009.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket 09-83, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or via the company's website, <http://www.bcpweb.com>.

This document does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small

Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of Allotments under Wyoming, is amended by adding Dubois, Channel 242C2.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E9-27367 Filed 11-13-09; 8:45 am]

**BILLING CODE 6712-01-S**

## DEPARTMENT OF HOMELAND SECURITY

### 48 CFR Parts 3009 and 3052

[Docket No. DHS-2009-0017]

RIN 1601-AA55

### Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony [HSAR Case 2009-001]

**AGENCY:** Office of the Chief Procurement Officer, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing a final rule to amend the Homeland Security Acquisition Regulation (HSAR) to establish guidelines under which DHS will prohibit awards of Federal Protective Service (FPS) contract for guard services to a business concern that is owned, controlled, or operated by an individual who has been convicted of a serious felony. The rule implements the provisions of the Federal Protective

Service Guard Contracting Reform Act of 2008.

**DATES:** *Effective date:* December 16, 2009.

*Applicability:* DHS contracting officers shall insert the clause at (HSAR) 48 CFR 3052.209-76 in solicitations for Federal Protective Service guard services issued on or after the effective date of this rule.

**FOR FURTHER INFORMATION CONTACT:** Gloria Sochon, Senior Procurement Analyst, at (202) 447-5307 for clarification of content.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110-356, 122 Stat. 3996 (Oct. 8, 2008), required DHS to promulgate regulations establishing guidelines for the prohibition of awards of FPS contracts for guard services to any business concern that is owned, controlled, or operated by an individual who has been convicted of a serious felony (as determined by DHS). This final rule implements the prohibition; identifies which felonies are serious and may prohibit a business concern from being awarded a contract; requires contractors to provide information regarding any felony convictions when submitting bids or proposals; provides guidelines for the contracting officer to assess present responsibility, mitigating factors, and the risk associated with the previous conviction; and allows the contracting officer to award a contract under certain circumstances, notwithstanding the conviction of a serious felony of an individual who owns, controls, or operates the contractor.

#### II. Discussion and Analysis

##### A. Final Rule

The final rule expressly defines certain types of felonies as serious felonies, and generally defines as serious felonies those which cast doubt on the integrity or business ethics of a business concern or are of a nature that is inconsistent with the mission of FPS. Serious felonies, committed by an individual who owns, controls, or operates the contractor, will normally prohibit a business concern from being awarded an FPS contract for guard services. Serious felonies include, but are not limited to, felony convictions for: fraud arising out of a contract with the federal, state or local government; bribery, graft or a conflict of interest; threatened or actual harm to a government official, family member or government property; crimes of