

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

violence; threat to national security; commercial bribery; counterfeiting; forgery; obstruction of justice, perjury or subornation of perjury, or bribery of a witness; felony for attempt to evade or defeat Federal tax or felony for willful failure to collect or pay over Federal tax; trafficking in illegal drugs, alcohol, firearms, explosives or other weapons; immigration violations and any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

The HSAR clause requires offerors to disclose whether they are or are not a business concern owned, controlled or operated by an individual convicted of a felony. If an offeror represents that it is owned, controlled or operated by an individual convicted of a felony, it will need to submit a new award request with its bid or proposal or a previously approved award request. The award request will provide the basis for the request and details regarding the felony conviction.

The clause also provides that after award of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreement, or other contractual instrument that may result in the issuance of task orders, calls, or exercise of options to extend the term of the contract, the contractor must provide notice of a felony conviction of any individual who owns, controls, or operates the business concern. The contracting officer will review the conviction and make a new determination of eligibility prior to the issuance of any task order, call, or exercise of any option.

The rule allows the contracting officer to review the basis for the award request and assess the risk associated with the felony conviction. If the contracting officer assesses the felony as not serious, as contemplated by the Act and this regulation, he or she may award a contract for guard services to a business concern owned, controlled or operated by an individual convicted of a felony. Prior to such an award, the contracting officer must prepare and submit a recommendation to the Head of the Contracting Activity. The Head of the Contracting Activity must approve both the contracting officer's recommendation and the award request.

#### *B. Changes Adopted in the Final Rule*

As a result of public comments received on the proposed rule, the final rule:

Revises the definition of "felony" for consistency with the definition of "individual" as used in (HSAR) 48 CFR 3009.171–2. The rule defines "individual" to include corporations, partnerships, or other entities as well as persons. If the definition did not include business organizations, DHS could not apply the prohibition to the felonious conduct of a business entity that owns controls or operates the business concern, which conduct would otherwise disqualify the business concern if committed by a natural person who owns controls or operates it. DHS believes that a business entity that owns, operates, or controls the business concern, as well as the business concern itself, should be held to the same standard as natural persons who own, operate, or control the business concern.

Revises 3009.171–5 to provide more structured and objective guidance to contracting officers. The rule more clearly defines serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services. The list of serious felonies is expanded with offenses determined by DHS to be serious felonies.

Revises (HSAR) 48 CFR 3009.171–6 and –7 to clearly establish that a referral of an award from the Contracting Officer to the HCA will include the Contracting Officer's determination and a recommendation for approval to promote consistency and objectivity. The HCA must document his or her decision in writing.

As a result of further internal review, DHS is also making the following changes in the final rule. The final rule:

Adds "exercise" of an option to (HSAR) 48 CFR 3009.171–3(b) for accuracy and clarity in describing the contractual instruments subject to reporting during performance.

Revises (HSAR) 48 CFR 3009.171–7(b) for consistency with (HSAR) 48 CFR 3009.171–6, which provides that contracting officers may consider the circumstances underlying a serious felony. In (HSAR) 48 CFR 3052.209–72, replaces references to "this regulation" with the appropriate HSAR reference as the clause requires specific citations when incorporated into a contract.

Replaces references to the "HCA for U.S. Immigration and Customs Enforcement" with "HCA." This provides authority to the cognizant HCA while removing the need for a rule change in the event of a future reorganization or restructuring.

Amends the Privacy Notice in (HSAR) 48 CFR 3052.209–72(e) to delete the reference to a Privacy Act system of records notice as DHS will not maintain a system of records on reported felonies. It also adds instructions on how to submit corrections to or remove information on individuals both prior to and after contract award.

#### *C. Response to Comments Received on the Notice of Proposed Rulemaking*

DHS published a proposed rule to implement the Federal Protective Service Guard Contracting Reform Act in the **Federal Register** on March 17, 2009. 74 FR 11512. DHS received three comments on the proposed rule. All three supported the rule's prohibition on awarding contracts for FPS guard services to convicted felons. One offered recommendations to extend the rule's coverage and another recommended that DHS not rely on self-reporting and that the rule further restrict contracting officers' discretion.

##### 1. Extending the Rule's Coverage

*Comment:* One comment recommended that the proposed regulation be amended and expanded to include the denial of contracts, as well as the termination of existing contracts, to security contractors that have a history of violating Federal laws, including but not limited to the National Labor Relations Act and Service Contract Act.

*Response:* DHS does not agree. This rule implements the specific statutory prohibition established under the Federal Protective Service Guard Contracting Reform Act of 2008. The Federal Acquisition Regulation (FAR) implements statutes and policy which provide protection against contracting with entities that violate Federal laws. FAR Parts 3 and 9 in particular address requirements for determining contractor responsibility and procedures for suspension and debarment. The Department of Labor enforces and administers laws governing legally-mandated wages and working conditions, including suspending and/or debaring entities who violate these laws.

##### 2. Reliance on Self-Reporting

*Comment:* One comment advised that it is unreasonable to depend on self-reporting to protect the Federal government from fraud. First, the comment notes that the rule requires a principal to report only convictions that fall in certain categories. Because the categories set forth are broad, an individual may unnecessarily disclose a conviction that is not covered.

Unnecessary disclosure does not advance contract fraud prevention and may infringe upon the civil liberties of the individual making the disclosure. Second, the comment notes that an individual who intends to engage in dishonest actions after receiving a Federal contract will not disclose a prior criminal conviction. Thus, the rule may serve to actually impair the honest while promoting the nefarious.

*Response:* DHS considered the advantages and disadvantages of relying on self-reporting. DHS had contemplated requiring business concerns to submit a list of all owners, controllers or operators with their proposal and DHS would then conduct criminal background checks on each of these individuals prior to contract award rather than relying on a self-reporting system. DHS elected not to require criminal records checks as a condition of award based upon related precedents and privacy and information collection concerns.

Numerous statutes and regulations intended to increase responsibility and integrity among government contractors do not require criminal background checks. For example, 10 U.S.C. 2408 prohibits felons from being employed in positions of responsibility on Department of Defense (DOD) contracts. The implementing Defense Federal Acquisition Regulation (DFARS 252.203–7001) makes no provision for criminal background checks in order to verify whether these individuals have been convicted of a fraud or felony arising out of a contract with the DOD, but rather relies on a similar self-reporting process. The Close the Contractor Fraud Loophole Act, Public Law 110–252, Tit. VI, ch. 1, 122 Stat. 2386 (June 30, 2008), requires contractors to disclose, in connection with the award, performance, or closeout of a contract or any subcontract, whether a principal, employee, agent, or subcontractor of the contractor has committed a violation of certain Federal criminal laws. The implementing Federal Acquisition Regulation (FAR 52.203–13) relies solely on the contractor to self-report such violations. The regulation does not require criminal background checks on principals, employees, agents or subcontractors in order to verify whether any of these individuals have violated Federal criminal law. Similarly, FAR 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, requires a contractor to report certain criminal convictions. The government procurement community does not normally conduct criminal

records checks to verify the accuracy of such contractor certifications. However, a false certification under this FAR clause, as well as under the instant HSAR representation, would constitute a criminal violation of 18 U.S.C. 1001 and, potentially, a violation of 18 U.S.C. 287.

DHS further considered Privacy Act, 5 U.S.C. 552a, and Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, requirements. In order to conduct a criminal background check, DHS must collect personally identifiable information (i.e., name and date of birth). To independently verify whether an offeror is owned, controlled or operated by a felon, DHS would need to collect this information on all covered individuals for an offeror. This would cause DHS to collect and retain personally identifiable information on many individuals with no felony conviction. To protect the integrity of the procurement process and prevent the release of pre-decisional information, DHS would need to require all offerors to submit this information. If DHS were to request this information only from the apparent successful offeror, that would constitute an early release of the award decision and could compromise the integrity of the procurement process. However, DHS would use only the information provided by the apparent successful offeror to conduct a criminal background check (i.e., DHS would not conduct checks on all owners, controllers, and operators identified in all proposals received). The information collection burden on small businesses and other entities seeking to provide guard services would increase without concomitant value or benefits to the government. The burden on the government for protecting this information would also increase, along with the risk of inadvertent disclosure.

DHS recognizes that some dishonest individuals may choose not to disclose a prior criminal conviction. The federal procurement system relies upon several other mechanisms which further protect the integrity of the procurement process. As noted above, false representations and claims may be prosecuted criminally, and may constitute a violation of the civil False Claims Act, 31 U.S.C. 3729 *et seq.* Also, felons may be precluded from participating in the federal procurement process by virtue of individual plea agreements or sentencing restrictions. Additionally, an agency may suspend or debar felons from receiving federal contracts for a specified period of time pursuant to FAR Part 9.4. The government has controls at the contracting officer level

to determine the present responsibility of such vendors. For example, pursuant to FAR 9.104–1, a contractor must have a satisfactory record of integrity and business ethics to be awarded a contract. As part of this present responsibility determination, the contracting officer must check the Excluded Parties List Systems (EPLS) to verify that a vendor is not suspended, proposed for debarment, or barred from receiving federal contract awards. The FAR also imposes certain reporting requirements on potential contractors. Under FAR 52.209–5, a vendor must certify as to whether the vendor or any of its principals has been convicted of certain civil judgments. If the vendor certifies that a covered conviction occurred, the contracting officer would examine it further to determine the vendor's present responsibility.

DHS notes the commenter's concerns that the rule requires only convictions falling into certain categories to be reported and that the categories of felonies in the proposed rule were so broad that individuals might disclose unnecessary information, which would not advance contract fraud prevention and may infringe upon the civil liberties of the individual making the disclosure. The rule requires business concerns to report all felony convictions for owners, controllers or operators, but it precludes contract award only for serious felony convictions. The business concern does not have discretion to determine that a felony is not serious, and so avoid reporting it. DHS is responsible for determining whether a reported felony casts doubt on the integrity or business ethics of the business concern, or is of a nature that is inconsistent with the mission of FPS.

The privacy risks associated with the disclosure of this information were carefully assessed. The privacy risk is mitigated to the extent that the felony conviction information requested is limited to the minimum amount of information necessary for the contracting officer, in consultation with other authorized agents, to determine whether the conviction is serious under the regulation, and should prohibit the vendor from receiving a contract award. In addition, submission of the felony conviction information by the individual is voluntary; however, failure to provide it may result in denial of an award to the business concern. The business concern will be responsible for collecting the required felony information from the individual convicted of the felony, and to provide the individual with a written privacy notice detailing the authority and purpose of the collection, how the

information will be shared, and that providing the information is voluntary. Finally, DHS did not receive any comments from individuals or guard service companies contesting the disclosure of this information.

To mitigate the concern over unnecessary disclosure, the final rule establishes a more structured definition of who owns, operates, or controls a business concern. This definition provides more effective guidance to assist offerors in determining which individuals are subject to the disclosure requirement.

In respect to the broad scope of the felonies identified in the proposed rule, this final rule establishes more structured and objective guidance for contracting officers. The rule more clearly defines serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services.

DHS recognizes that a formal criminal background check of each individual with sufficient ownership interest in a contractor or offeror would provide a greater degree of certainty, but DHS believes that the risk and rewards assessment does not support the expenditure necessary for this function. For example, the individuals with sufficient ownership interest do not acquire any independent security access or authority from the contract and run a substantial risk of criminal penalties from falsely omitting a criminal felony conviction. This is particularly true because criminal convictions are matters of public record.

### 3. Scope of Contracting Officers' Discretion

*Comment:* One comment noted that the rule gives inappropriate discretion to contracting officers. The contracting officer is asked to examine the nature and circumstances surrounding a conviction and whether the individual has accepted full responsibility for their past misconduct without appropriate training. Further, the circumstances that serve as mitigating factors are not delineated, allowing different contracting officers to arrive at vastly different decisions based on similar facts and leading to unfair results. A contracting officer's exercise of discretion should be limited to judging the external merits of the guard services offered, the capacity of the company to perform those services, and the business' record of integrity.

*Response:* DHS recognizes that contracting officers may not have the training or law enforcement expertise to evaluate all felony conviction information and determine on their own

whether a particular felony constitutes a serious felony that would preclude a firm from being awarded a FPS guard service contract. DHS intends to issue an internal policy directive which will further delineate the process contracting officers will use to review an award request and determine whether the associated felony conviction is serious enough to prohibit contract award. As part of the risk assessment process, the contracting officer may request the assistance of offices in DHS which possess the requisite subject matter expertise to properly evaluate felony conviction information and assist the contracting officer in determining whether the felony conviction is considered serious enough, by nature or circumstance, to prohibit contract award. Just as a contracting officer must evaluate information related to other criminal violations in determining present responsibility, or the Suspending Official or Debarring Official evaluates such information when making suspension and debarment decisions, it is equally important that a contracting officer maintain decision-making authority as to eligibility for award under this new HSAR clause. DHS contracting officers are able to make appropriate business decisions based on the particular facts of each given situation, consulting with appropriate subject matter experts where necessary.

The final rule does make two changes that will promote objective and consistent application of the circumstances that serve as mitigating factors. As noted earlier, the rule provides more structured and objective guidance by more clearly defining serious felonies that will prohibit a business concern from being awarded a contract for FPS guard services. The final rule requires the contracting officer to provide the Head of the Contracting Activity the contracting officer's determination that a reported felony is either not serious or that circumstances are such that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics or ability to perform consistently with FPS' mission, together with a recommendation for approval of the award request. The HCA must make a final written decision on the award approval request. This provides more centralized review and decision-making, promoting consistency and objectivity. The discretion provided to the contracting officer and the HCA is consistent with the Act's provision that the regulations "provide guidelines for the contracting officer to assess

present responsibility, mitigating factors, and the risk associated with the previous conviction, and allow the contracting officer to award a contract under certain circumstances." This provision was intended to avoid an overly broad prohibition which could disproportionately affect small businesses. The discretion that it provides is consistent with other acquisition statutes and regulations. It recognizes the need for fairness and due process. DHS believes the controls established in the rule will allow DHS to apply this discretion in a responsible manner to meet our agency needs.

## III. Regulatory Requirements

### A. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993), as amended. The rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

*Comment:* DHS received a single comment regarding the estimate of the economic impact of the rule on small businesses. One commenter was disturbed by a perception that approximately ten percent of the FPS contracts are held by security contractors owned or operated by a convicted felon.

*Response:* This ten percent figure is not meant to indicate that FPS believes that ten percent of current guard service providers are operated by convicted felons. Ten percent is simply an educated estimate given the wide range of offenses that constitute a felony and the fact that felony offenses can remain on an individual's record for a lifetime. DHS received no comments that disputed the ten percent estimate or proposed an alternative.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, DHS is required to determine whether a rule will have a significant economic impact on a substantial number of small businesses. At this time, it is unknown how many guard service providers are owned, controlled or operated by an individual convicted of a felony. Without actual statistics or the ability to quickly and efficiently gather this information, DHS was required to provide an educated estimate as to the number of firms that would be impacted by the proposed rule.

The rule not only requires vendors to notify FPS of felony convictions at the time of proposal submission, but vendors are also required to notify FPS

if an individual that owns, controls or operates the business concern is convicted of a felony during actual contract performance. To date, FPS has had experience with a single guard service provider known to be owned, controlled and operated by an individual convicted of a felony. However, given that FPS has no other verifiable data to support an estimate, coupled with the facts that felonies can consist of any offense ranging from a violent offense to driving under the influence, and that a felony charge can remain on an individual's record for a lifetime, DHS believes this rule may impact a few firms. The figure of ten percent, although a high estimate, is believed to be reasonable to support the determination that the rule will not have a significant economic impact on a substantial number of small businesses.

As a result, DHS certifies that the final rule amending (HSAR) 48 CFR 3009.1 and 3052.209 will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The factual basis for certification is presented in the following analysis of the economic effects of the proposed rule. Application of the rule is limited to offerors or contractors providing guard services under the FPS contract security guard program. Further, for these offerors and contractors, the economic impact of the rule is not expected to be substantial. Currently, FPS administers a contract inventory consisting of approximately 125 contract vehicles for guard services with 46 different guard service vendors. These FPS contracts provide 14,000 contract guards to protect 9,000 federal facilities. In FY2008, DHS issued approximately 47 solicitations for guard services and awarded 55 contracts. For each solicitation issued, an average of 10 offerors responded.

The 46 vendors that provide guard services to FPS represent less than one percent of the industry. In 2005, the Small Business Administration, based on Bureau of Census data, estimated that there were 4,853 firms in Security Guards and Patrol Services Industry, North American Industry Classification System (NAICS) 561612. See e.g. Small Business Administration, *Small Business Size Standards: Security Guards and Patrol Services*, 70 FR 68368 (Nov. 10, 2005) (proposed rule); id. 71 FR 37490 (June 30, 2006) (final rule). The Central Contractor Registration database ([www.ccr.gov](http://www.ccr.gov)) currently lists 5,952 active records for NAICS 561612. Of these, 4,822, or 81

percent are identified as small businesses.

Only those vendors that represent that they are owned, controlled, or operated by an individual convicted of a felony will need to submit a new award request with their bid or proposal or a previously approved award request. After award, a contractor will need to disclose felony convictions that occur during the term of the contract. DHS estimates that this may affect no more than ten percent of offerors (fewer than 50 per year—47 solicitations  $\times$  10 offerors per solicitation  $\times$  .1) and ten percent of contractors (fewer than five per year—46 guard service vendors  $\times$  .1)). The award request must provide the basis for the request and details regarding the felony conviction to include: The age of the conviction, nature and circumstances surrounding the conviction, protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct, whether the individual has made full restitution for the felony and whether the individual has accepted responsibility for past misconduct resulting in the felony conviction. Under certain circumstances, the contracting officer may still award a contract for guard services to a business concern owned, controlled or operated by an individual convicted of a felony. Only those felonies that cast doubt on the integrity or business ethics of the business concern or are of a nature that are inconsistent with the mission of FPS will prohibit a business concern from being awarded an FPS contract for guard services. Serious felony convictions include, but are not limited to: 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 violence, threat to national security, commercial bribery, counterfeiting, forgery, obstruction of justice, perjury or subornation of perjury, or bribery of a witness, felony for attempt to evade or defeat Federal tax or felony for willful failure to collect or pay over Federal tax. In summary, DHS anticipates that the economic impact of this rule will not exceed:

*Solicitations:*

*Respondents making the representation:* 470.

*Responses per respondent:* 1.

*Total annual responses:* 470.

*Preparation hours per response:* .25.

*Subtotal response burden hours:* 117.5.

*Respondents submitting an award request:* 47.

*Responses per respondent:* 1.

*Total annual responses:* 47.

*Preparation hours per response:* 2.

*Subtotal response burden hours:* 94.

*Total response burden hours:* 211.5.

*Average Hourly Rate (\$72  $\times$  36.35*

*percent overhead):* \$98.

*Estimated cost:* \$20,763.

*Active Contracts:*

*Respondents submitting an award request:* 13.

*Responses per respondent:* 1.

*Total annual responses:* 13.

*Preparation hours per response:* 2.

*Total response burden hours:* 26.

*Average Hourly Rate (\$72  $\times$  36.35*

*percent overhead):* \$98.

*Estimated cost:* \$2,552.

Therefore, DHS has not performed either an initial or a final regulatory flexibility analysis.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, applies because the rule contains information collection requirements.

(1) The clause at 3052.209–76 requires each offeror for FPS contract guard services to disclose whether it is owned, controlled or operated by an individual convicted of a felony. The representation is necessary to evaluate the offeror's responsibility related to performing the required services in accordance with Public Law 110–356. An offeror that is owned, controlled or operated by a felon must also submit an award request with supporting documentation. DHS has determined that the burden for the responses is within the total estimated burden for information requested from prospective contractors in response to agency-issued solicitations approved under OMB Control No. 1600–0005. Based on FY2008 statistics, DHS has approximately 470 respondents to solicitations for contract guard services per year (47 solicitations with an average of 10 offers per solicitation), all of whom will make the representation. Of these, DHS estimates that 10 percent (47 per year) may submit award requests. DHS estimates the total burden on offerors to be 211.5 hours. This represents .1 percent of the total burden hours under OMB Control No. 1600–0005.

(2) The clause at 3052.209–76 requires the contractor to report felony convictions after award of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreement, or other contractual instrument that may result in the issuance of task orders, calls, or exercise of options to extend the term of the contract. The notice applies to a felony conviction of any individual who

owns, controls, or operates the business concern. DHS has determined that the burden for the responses is within the total estimated burden for information requested from contractors in response to OMB Control No. 1600-0003 for information requested from contractors as part of post-contract award administration by DHS acquisition officials. DHS has 125 contracts for FPS guard services. Of these, DHS estimates that 10 percent will also submit a notice of felony conviction. DHS estimates the total burden on contractors to be 25 hours. This represents less than .001 percent of the total burden hours under OMB Control No. 1600-0003.

#### List of Subjects in 48 CFR Parts 3009 and 3052

Government procurement.

**Richard K. Gunderson,**

*Acting Chief Procurement Officer,  
Department of Homeland Security.*

■ Accordingly, DHS amends 48 CFR parts 3009 and 3052 as follows:

■ 1. The authority citation for 48 CFR parts 3009 and 3052 continues to read as follows:

**Authority:** 41 U.S.C. 418b(a) and (b).

#### PART 3009—CONTRACTOR QUALIFICATIONS

##### Subpart 3009.1—Responsible Prospective Contractors

■ 2. Amend Subpart 3009.1 by—

■ a. Redesignating section 3009.104–70 as section 3009.170 and redesignating subsections 3009.104–71 through 3009.104–75 as subsections 3009.170–1 through 3009.170–5, respectively; and

■ b. Adding section 3009.171 to read as follows:

**3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.**

3009.171–1 General.

3009.171–2 Definitions.

3009.171–3 Determination of eligibility for award of FPS guard service contracts.

3009.171–4 Determination of ownership, control, or operation.

3009.171–5 Serious felonies prohibiting award.

3009.171–6 Guidelines for contracting officers.

3009.171–7 Contract award approval procedures for contractors with felony convictions.

3009.171–8 Ineligible contractors.

3009.171–9 Clause.

**3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.**

##### 3009.171–1 General.

Except as provided in (HSAR) 48 CFR 3009.171–6 and 3009.171–7, Department of Homeland Security (DHS) contracting officers shall not enter into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

##### 3009.171–2 Definitions.

As used in this subpart—

*Business concern* means a commercial enterprise and the people who constitute it.

*Felony* means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

*Convicted of a felony* means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

*Individual* means any person, corporation, partnership, or other entity with a legally independent status.

##### 3009.171–3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171–4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

##### 3009.171–4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern

is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person sharing a household with, the individual will be imputed to the individual in determining whether and the extent to which the individual owns, controls, or operates the business concern.

(c) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(1) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(2) Officials of comparable function and status to those described in paragraph (c)(1) of this subsection as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(3) A general partner in a general or limited partnership.

(4) An individual with a limited partnership interest of 25% or more.

(5) An individual that has the:

(i) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(ii) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(iii) Ability to exercise a controlling influence over the business concern's management, policies, or decision making.

(d) Generally, the existence of one or more of the roles or interests set forth in paragraph (c) of this subsection, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different

determination by the contracting officer, where, for example, an indicator in paragraph (c) of this subsection, in light of all of the facts and circumstances, suggests that the individual lacks sufficient authority or autonomy to exert authority customarily associated with ownership or control or the assertion of operational prerogatives (e.g. the individual is one of twenty on a board of directors, plays no other role, and holds no other interest). Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests.

**3009.171-5 Serious felonies prohibiting award.**

(a) Only serious felony convictions will prohibit a business concern from being awarded a contract for FPS guard services. Serious felonies that will prohibit contract award are any felonies that involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflect adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that cast doubt on the integrity or business ethics of the business concern; or are of a nature that is inconsistent with the mission of FPS, including, without limitation, those felonies listed in paragraphs (b)(1) through (12) of this subsection.

(b) The following is a list of offenses determined by DHS to be serious felonies for purposes of the Federal Protective Service Guard Reform Act of 2008. Except as provided in (HSAR) 48 CFR 3009.171-7(f), award of a contract for FPS guard services will not be made to any business that is owned, controlled, or operated by an individual who has been convicted of a felony involving:

(1) Fraud of any type, including those arising out of a procurement contract, cooperative agreement, grant or other assistance relationship with the federal, state or local government, as well as, without limitation, embezzlement, fraudulent conversion, false claims or statements, kickbacks, misappropriations of property, unfair or deceptive trade practices, or restraint of trade;

(2) Bribery, graft, or a conflict of interest;

(3) Threatened or actual harm to a government official or family member;

(4) Threatened or actual harm to government property;

(5) A crime of violence;

(6) A threat to national security;

(7) Commercial bribery, counterfeiting, or forgery;

(8) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

(9) An attempt to evade or defeat Federal tax;

(10) Willful failure to collect or pay over Federal tax;

(11) Trafficking in illegal drugs, alcohol, firearms, explosives, or other weapons;

(12) Immigration violations (e.g., 8 U.S.C. 1324, 1324c, 1326); and

(13) Any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

**3009.171-6 Guidelines for contracting officers.**

(a) In accordance with FAR Subpart 9.4 (48 CFR subpart 9.4), a contracting officer may not award a contract for FPS guard services to any business concern that is suspended, debarred or proposed for debarment unless the agency head determines that there is a compelling reason for such action.

(b) The contracting officer shall not award a contract for FPS guard services to any business concern that is otherwise nonresponsible on the same contract.

(c) The contracting officer shall not award an FPS guard services contract to any business concern that is owned, controlled or operated by an individual convicted of a serious felony as defined in (HSAR) 48 CFR 3009.171-5 except as provided in under (HSAR) 48 CFR 3009.171-7.

(d) In considering an award request under (HSAR) 48 CFR 3009.171-7, the contracting officer may not review the fact of the conviction itself, but may consider any information provided by the individual or business concern, and any information known to the contracting officer. Factors that the contracting officer may consider include, but are not limited to:

(1) The age of the conviction.

(2) The nature and circumstances surrounding the conviction.

(3) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(4) Whether the individual has made full restitution for the felony.

(5) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

**3009.171-7 Contract award approval procedures for contractors with felony convictions.**

(a) The HCA has sole discretion to approve a request to permit award of a contract for FPS guard services to a business concern owned, controlled, or operated by an individual convicted of a felony, for any reason permitted by this regulation. This authority is not delegable.

(b) A business concern owned, operated or controlled by an individual convicted of any felony (including a serious felony) may submit an award request to the contracting officer. The basis for such request shall be that the subject felony is not a serious felony as defined by this regulation; that such individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer poses the contract risk the Act and this regulation were designed to guard against. The business concern shall bear the burden of proof for award requests.

(c) A copy of the award approval request with supporting documentation or a previously approved award request shall be attached with the bid or proposal.

(d) An award approval request shall contain the basis for the request, including, at a minimum, the following information:

(1) Name and date of birth of individual convicted of a felony;

(2) A full description of which roles or interests indicate that the individual owns, controls, or operates, or may own control or operate the business concern;

(3) Date sentenced;

(4) Statute/Charge;

(5) Docket/Case Number;

(6) Court/Jurisdiction;

(7) The nature and circumstances surrounding the conviction;

(8) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct;

(9) Whether the individual has made full restitution for the felony; and

(10) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(e) If the contracting officer is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and would be consistent with the



mission of FPS, then the contracting officer shall deny the award approval request and not forward such request to the HCA.

(f) For a felony that meets any of the following conditions, the contracting officer shall refer the award request, with a copy of the contracting officer's determination, to the HCA with a recommendation for approval:

(1) The subject felony is not a serious felony as defined by this regulation;

(2) The convicted individual does not or no longer owns, controls or operates the business concern; or

(3) The commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of the FPS.

(g) The HCA shall make a final written decision on the award approval request following referral and after any necessary additional inquiry.

#### **3009.171-8 Ineligible contractors.**

Any business concern determined to be ineligible for award under (HSAR) 48 CFR 3009.171-5 to 3009.171-7 shall be ineligible to receive a contract for guard services under the FPS guard program until such time as:

(a) The concern demonstrates that it has addressed and resolved the issues that resulted in the determination of ineligibility, and

(b) The HCA approves an award request under (HSAR) 48 CFR 3009.171-7.

#### **3009.171-9 Clause.**

Insert the clause (HSAR) 48 CFR 3052.209-76, Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony, in all solicitations and contracts for FPS guard services.

### **PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Amend section 3052.209 by adding section 3052.209-76 to read as follows:

#### **3052.209-76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.**

As prescribed at (HSAR) 48 CFR 3009.171-9, insert the following clause: PROHIBITION ON FEDERAL PROTECTIVE SERVICE GUARD SERVICES CONTRACTS WITH BUSINESS CONCERNS OWNED, CONTROLLED, OR OPERATED BY AN

#### **INDIVIDUAL CONVICTED OF A FELONY (AUG 2009)**

(a) Prohibitions. Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110-356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) Definitions. As used in this clause: *Business concern* means a commercial enterprise and the people who constitute it. *Felony* means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

*Individual* means any person, corporation, partnership, or other entity with a legally independent status.

*Convicted of a felony* means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual's spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(ii) Officials of comparable function and status to those described in paragraph (c)(2)(i) of this clause as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(iii) A general partner in a general or limited partnership.

(iv) An individual with a limited partnership interest of 25% or more.

(v) An individual that has the:

(A) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(B) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(C) Ability to exercise a controlling influence over the business concern's management and policies.

(3) Generally, the existence of one or more of the roles or interests set forth in paragraph (c)(2) of this clause, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by Government in light of all of the facts and circumstances. Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests, and the offeror or contractor should reveal the existence of felony convictions if there is doubt as to whether the individual owns, controls or operates the business concern.

(d) Award request.

(1) A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Contracting Officer. The basis for such request shall be either that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS. The business concern shall bear the burden of proof for award requests.

(2) If the Contracting Officer in his or her sole discretion, is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5 or that such individual no longer owns, controls or operates the business concern, then the Contracting Officer shall deny the award request.

(3) The Head of the Contracting Activity has sole discretion to approve an award request.

(4) A copy of the award request with supporting documentation or a copy of a previously approved award request shall be attached with the bid or proposal.

(5) An award request shall contain the basis for the request (i.e., that the subject felony is not a serious felony as defined by this regulation; that the convicted individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS). The award request shall contain, at a minimum, the following information:

(i) Name and Date of Birth of Individual Convicted of a felony.

(ii) A full description of which roles or interests indicate that the individual owns, controls, or operates or may own control or operate the business concern.

(iii) Date sentenced.

(iv) Statute/Charge.

(v) Docket/Case Number.



(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)(1) *Privacy Statement.* The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) *Privacy Notice.* The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110-356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or

erroneous information contact the contracting officer of record. The contracting officer will handle such requests on a case by case basis.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

[FR Doc. E9-27330 Filed 11-13-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 090218194-91045-02]

RIN 0648-AX65

#### List of Fisheries for 2010

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2010, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2010 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine

mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** This final rule is effective January 1, 2010.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices. Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to David Rostker, OMB, by fax to 202-395-7285 or by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301-713-2322; David Gouveia, Northeast Region, 978-281-9280; Anne Ney, Southeast Region, 727-551-5758; Elizabeth Petras, Southwest Region, 562-980-3238; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-944-2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: <http://www.nmfs.noaa.gov/pr/interactions/lof/> or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Anne Ney;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West