

the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment was prepared after the public notice period is closed and considered all comments received on the public notice. The environmental assessment may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

*d. Unfunded Mandates Act*

This final rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 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, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

■ 1. The authority citation for 33 CFR 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 § 334.1380 to read as follows:

**§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.**

(a) *The danger zone.* The area within a sector extending seaward a distance of 3.8 nautical miles between radial lines bearing 357.1° true and 124.9° true, respectively, from a starting point on Mokapu Peninsula at latitude 21°27'11.84" N, longitude 157°43'53.83" W, and overlapping the existing 500-yard wide prohibited area. The danger zone is defined as a pie-shaped area bounded by the landward starting point on Mokapu Peninsula and the three seaward points forming an arc with a 3.8 nautical-mile radius at its center (Point B) with a radial line bearing 56.9° true. The three seaward points have the following coordinates:

Point A: Latitude 21°30'59.66" N,  
Longitude 157°44'05.97" W  
Point B: Latitude 21°29'16.58" N,  
Longitude 157°40'30.19" W

Point C: Latitude 21°25'01.79" N,  
Longitude 157°40'33.70" W

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 11 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the MCBH Range Manager, AC/S G-3 (telephone number 808-257-8816/17).

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is scheduled. Passage of vessels through the danger zone when weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCBH Kaneohe Bay military personnel utilizing by hailing the vessel on VHF channel 16 or contacting directly by U.S. Navy surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The enforcing agency.* The regulations shall be enforced by the Commanding Officer, MCB Hawaii, Kaneohe Bay and such agencies as he/she may designate.

Dated: November 5, 2009.

**Michael G. Ensich,**  
Chief, Operations, Directorate of Civil Works.  
[FR Doc. E9-27486 Filed 11-13-09; 8:45 am]  
BILLING CODE 3720-58-P

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

**Restricted Areas at Cape Canaveral Air Force Station, Patrick AFB, FL**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.

**ACTION:** Correcting amendments.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) published a document in the **Federal Register** on July 23, 2009 (74 FR 36400), revising the restricted areas at Cape Canaveral Air Force Station, Patrick Air Force Base (AFB), Florida. The revision included the establishment of a restricted area within the waters of the Atlantic Ocean offshore of the Cape Canaveral Air Force Station. The regulation included information regarding the boundaries of the new restricted area, including a reference to the offshore (eastern) boundary as being 1.5 miles offshore of the mean high water line. The final rule did not reference the type of mile unit to be used for the boundary line of the restricted area. The intent was to use nautical miles as the unit type. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of the restricted area, we are also correcting those coordinates. This document corrects the final regulation by revising this section.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Mr. Jon Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division at 904-232-1680.

**SUPPLEMENTARY INFORMATION:** On July 23, 2009 (74 FR 36400), the Corps published a document in the **Federal Register** establishing a new restricted area at Cape Canaveral Air Force Station, Patrick AFB, Florida. Section 334.595(a) of the final rule did not specify the type of mile unit to use to define the area. Nautical miles are to be used to define this restricted area. Since the use of nautical miles changes the coordinates for the northeast and southeast corner points of this restricted

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]

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## 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