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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 326

COE-2017-0008

RIN 0710-AA77

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, Department of Defense

ACTION: Direct final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing this final rule to adjust its civil monetary penalties under the Clean Water Act (CWA) and the National Fishing Enhancement Act to account for inflation. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act), which requires agencies to adjust the levels of civil monetary penalties with an initial "catch-up" adjustment followed by annual adjustments for inflation. The Inflation Adjustment Act prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. Using the adjustment criteria provided in the Inflation Adjustment Act for the initial "catch-up" adjustment and the December 16, 2016, Office of Management and Budget Memorandum regarding the "Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015", the 2016 catch-up adjustment and 2017 annual adjustment

for inflation will increase the Class I civil penalty under Section 309 of the Clean Water Act to $20,966 per violation, and the maximum civil penalty increases to $52,414. The judicial civil penalty under Section 404(s) of the Clean Water Act increases to $52,414 per day for each violation. Under the National Fishing Enhancement Act, the Class I civil penalty increases to $22,957 per violation.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the Corps receives substantive adverse comment by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER]. If we receive such adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE-2017-0008, by any of the following methods:.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: stacey.m.jensen@usace.army.mil. Include the docket number, COE-2017-0008, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW-CO (Stacey M. Jensen), 441 G Street, NW, Washington, D.C. 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2017-0008. All comments received will be included in the public docket without change and may be

made available on-line at http://www.regulations.gov , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey M. Jensen at 202-761-5856 or by e-mail at stacey.m.jensen@usace.army.mil or access the U.S. Army Corps of

Engineers Regulatory Home Page at http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx .

SUPPLEMENTARY INFORMATION:

Executive Summary

The Corps is publishing this final rule to adjust its civil monetary penalties for inflation pursuant to the Inflation Adjustment Act. This law requires the Corps to publish an initial ‘‘catch-up” adjustment with subsequent annual adjustments for inflation. The purpose of the Inflation Adjustment Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today’s dollars and rounding statutory civil penalties to the nearest dollar. Although the Inflation Adjustment Act required agencies to make an initial “catch-up” adjustment through an interim final rule to be published by July 1, 2016, and to publish annual adjustments beginning no later than January 15, 2017, the Corps has not yet made either adjustment. Accordingly, the Corps is combining both the “catch-up” adjustment that would have become effective by August 1, 2016, and the first annual adjustment that would have become effective by January 15, 2017, in this final rule. The rule will apply prospectively, to penalty assessments beginning on its effective date. Subsequently, the Corps intends to publish annual adjustments as required by the Inflation Adjustment Act, no later than January 15 of each calendar year.

Pursuant to the Inflation Adjustment Act, the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), and guidance issued by the Office of Management and Budget (OMB),[1] the Corps finds that good cause exists for issuing this final rule without prior

[1] See Office of Management and Budget (OMB) Memoranda M-16-06 (Feb. 24, 2016) and M-17-11 (Dec. 16, 2016).

notice and comment. The Inflation Adjustment Act does not require agencies to implement the required adjustments through a notice and comment process unless proposing an adjustment of less than the amount otherwise required, and the Corps is not exercising any discretion it may have to make a lesser adjustment. For the annual adjustments beginning in 2017, the Inflation Adjustment Act provides a clear formula for adjustment of the civil penalties, and the Corps has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. The Inflation Adjustment Act further provides that the increased penalty levels apply to penalties assessed after the effective date of the increase. For these reasons, the Corps finds that notice and comment would be impracticable and unnecessary in this situation and contrary to the language of the Inflation Adjustment Act. The Corps also notes that as we have no discretion on this action, comments received on this civil penalty rulemaking will generally not be viewed as "adverse," but the 30-day delayed effective date period does provide the opportunity for the public to voice their concerns if we have overlooked anything.

Section 4 of the Inflation Adjustment Act directs federal agencies to publish annual penalty inflation adjustments. In accordance with Section 553 of the Administrative Procedures Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the Federal Register. However, because the Inflation Adjustment Act directed agencies to make the initial "catch-up" adjustment through an interim final rule, agencies were not required to complete a notice

and comment process prior to promulgating that adjustment.[2] Section 4(b)(2) of the Inflation Adjustment Act further provides that each agency shall make the annual inflation adjustments "notwithstanding section 553" of the APA. According to the December 2016 OMB guidance issued to Federal agencies on the implementation of the 2017 annual adjustment, the phrase "notwithstanding section 553" means that "the public procedure the APA generally provides – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment." Consistent with the language of the Inflation Adjustment Act and OMB's implementation guidance, this rule is not subject to notice and opportunity for public comment. As the Corps did not previously publish an interim final rule, the Corps is delaying the effective date of this final rule for 30 days following publication.

Background

On August 3, 2011, the Deputy Secretary of Defense delegated to the Secretary of the Army the authority and responsibility to adjust penalties administered by the U.S. Army Corps of Engineers. On August 29, 2011, the Secretary of the Army delegated that authority and responsibility to the Assistant Secretary of the Army for Civil Works.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (Inflation Adjustment Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 as previously amended by the 1996 Debt Collection Improvement Act (DCIA; collectively, ''prior inflation adjustment Acts''), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment

[2] Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4(b)(1)(A), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. § 2461 note); OMB Memorandum No. M-16-06 at 3.

Act requires agencies to do the following: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment, through an interim final rule to be published by July 1, 2016; and (2) beginning no later than January 15, 2017, make subsequent annual adjustments for inflation. The Inflation Adjustment Act does not alter an agency's statutory authority, to the extent it exists, to assess penalties below the maximum level. This final rule implements the initial "catch-up" adjustment mandated by the Inflation Adjustment Act as well as the 2017 annual inflation adjustment mandated by the Act.

The Inflation Adjustment Act amends prior inflation adjustment Acts by substantially revising the method of calculating inflation adjustments. Prior inflation adjustment Acts required adjustments to civil penalties to be rounded significantly. For example, a penalty increase that was greater than $1,000, but less than or equal to $10,000, would be rounded to the nearest multiple of $1,000. While this allowed penalties to be kept at round numbers, it meant that agencies often would not increase penalties at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent, which meant that longer periods without an inflation adjustment could cause a penalty to rapidly lose value in real terms. Over time, this formula caused agency civil penalties to lose value relative to total inflation, thereby undermining Congress' original purpose in enacting statutory civil monetary penalties to be a deterrent and to promote compliance with the law. The Inflation Adjustment Act has removed these rounding rules. Penalties now are simply rounded to the nearest dollar. This rounding ensures that penalties will be increased each year to more effectively keep up with inflation.

The Inflation Adjustment Act required a "catch-up" adjustment that reset the inflation calculations by excluding prior inflationary adjustments under prior inflation adjustment Acts, and subsequent, annual adjustments to all civil penalties under the laws implemented by that agency. With this rule, the new statutory maximum penalty levels listed in Table 1 will apply to all statutory civil penalties assessed on or after the effective date of this rule.

Calculation of "Catch-Up" Adjustment

OMB issued guidance on calculating the initial "catch-up" adjustment in February 2016. That guidance included a table of multipliers to adjust the penalty level based on the year that the penalty was established or last adjusted by statute or regulation (other than the Inflation Adjustment Act).

Table 1 shows the calculation of the initial catch-up adjustment based on the guidance provided by OMB. Column (1) contains the United States Code citations for the penalty statute. Column (2) contains the dollar amount most recently established by law (other than prior inflation adjustment Acts) for each civil monetary penalty. Column (3) sets out the year the Corps' civil monetary penalties were enacted or last adjusted by law (other than adjustments under the Inflation Adjustment Act). Column (4) sets out the factor determined by OMB to adjust for inflation from October of the corresponding year in column (3) to October 2015. Column (5) sets out the adjusted civil monetary penalty resulting from multiplying the dollar amount of the civil monetary penalty set out in Column (2) by the inflation factor in column (4). Column (6) sets out the civil monetary penalty that was in effect on November 2, 2015. Column (7) sets out the maximum catch-up penalty – an amount that is 250 percent of the 2015 penalty – which is

calculated by multiplying the penalty amount in Column (6) by 2.5 (to achieve a 150 percent increase for a total of 250 percent of the 2015 penalty). Column (8) sets out the initial catch-up penalty amount, which is the lesser of the adjusted civil monetary penalty in Column (5) or the maximum civil monetary penalty in Column (7).

Calculation of 2017 Annual Inflation Adjustment

The Office of Management and Budget (OMB) issued guidance on calculating the 2017 annual inflation adjustment. See December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, OMB, Subject: Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The OMB provided to agencies the cost-of-living adjustment multiplier for 2017, based on the CPI-U for the month of October 2016, not seasonally adjusted, which is 1.01636. Agencies are to adjust "the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment." For 2017, agencies multiply each applicable penalty by the multiplier, 1.01636, and round to the nearest dollar. The multiplier should be applied to the most recent penalty amount, i.e., the one that includes the initial catch-up adjustment mandated by the Inflation Adjustment Act. Column (9) in Table 1 sets out the 2017 Inflation Adjustment Multiplier while Column (10) sets out the new penalty levels which take effect upon the effective date of this adjustment, on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

TABLE 1

Citation	Current Civil Monetary Penalty (CMP)	Year CMP enacted or last	Inflation factor for year in column	Adjusted CMP -- $ amount in column (2)	CMP amount as of Nov. 2, 2015	CMP Cap – 2.5 x amount in	Catch-up CMP – lesser of column (5)	2017 Inflation Adjustment Multiplier	CMP Amount as of [INSERT

	Amount established by law	adjusted by law	(3)	x factor in column (4)		column (6)	or (7)		DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]
CWA, 33 U.S.C. 1319(g)(2)(A)	$10,000 per violation, with a maximum of $25,000	1987	2.06278	$20,628 per violation, with a maximum of $51,570	$11,000 per violation, with a maximum of $32,500	$27,500 per violation, with a maximum of $81,250	$20,628 per violation, with a maximum of $51,570	1.01636	$20,966 per violation, with a maximum of $52,414
CWA, 33 U.S.C. 1344(s)(4)	Maximum of $25,000 per day for each violation	1987	2.06278	Maximum of $51,570 per day for each violation	Maximum of $25,000 per day for each violation	Maximum of $81,250 per day for each violation	Maximum of $51,570 per day for each violation	1.01636	Maximum of $52,414 per day for each violation
National Fishing Enhancement Act, 33 U.S.C. 2104(e)	Maximum of $10,000 per violation	1984	2.25867	Maximum of $22,587 per violation	Maximum of $11,000 per violation	Maximum of $27,500 per violation	Maximum of $22,587 per violation	1.01636	Maximum of $22,957 per violation

In sum, under this final rule the minimum Class I civil penalty for violations under CWA Section 309(g)(2)(A), 33 U.S.C. 1319(g)(2)A), will increase from $11,000 per violation to $20,966, and the maximum penalty will increase from $32,500 per violation to $52,414. Judicially-imposed civil penalties under CWA Section 404(s)(4), 33 U.S.C. 1344(s)(4), will increase from a maximum of $25,000 per day for each violation to $52,414. Finally, the Class I civil penalty for violations of Section 205(e) of the National Fishing Enhancement Act, 33 U.S.C. 2104(e), will increase from a maximum of $11,000 per violation to $22,957.

This rule will not result in any additional costs to implement the Corps Regulatory Program because the Class I civil penalties and judicial civil penalties have been in effect since 1990 when the Corps first promulgated regulations regarding such penalties (Class I civil penalties were first established by statute in 1987). This rule merely adjusts the value of current statutory civil penalties to reflect and keep pace with the levels originally set by Congress when the statutes were enacted, as required by the Inflation Adjustment

Act. This rule will result in additional costs to members of the regulated public who do not comply with the terms and conditions of issued Department of the Army permits and either receive a final Class I civil administrative penalty order from a District Engineer or are subject to a judicial civil penalty because it increases the minimum and maximum penalty amounts to $20,966 and $52,414 for Class I civil administrative penalties under the Clean Water Act, to a maximum of $52,414 for judicially-imposed civil penalties under the Clean Water Act, and to a maximum of $22,957 for Class I civil administrative penalties under the National Fishing Enhancement Act. The benefit of this rule will be to improve the effectiveness of Corps civil monetary penalties by maintaining their deterrent effect and promoting compliance with the law.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the Corps and the use of "you" refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This final rule will not impose any new information collection burden under the provisions of the Paperwork Production Act (44 U.S.C. 3501 *et seq*.). This action merely increases the level of statutory civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of Corps-administered statutes and their implementing regulations.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For the Corps regulatory program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710-0003). However, there are no new approval or application processes required as a result of this rulemaking that necessitate a new Information Collection Request (ICR). The regulation would not impose reporting or recordkeeping requirements. Therefore, this action is not subject to the Paperwork Reduction Act.

Executive Order 12866 and Executive Order 13563, "Improving Regulation and Regulatory Review"

The OMB has not designated this final rule a "significant regulatory action" under Executive Order 12866. Accordingly, OMB has not reviewed this rule. Moreover, this

final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the Inflation Adjustment Act and OMB guidance. The Corps, therefore, did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." The phrase "policies that have Federalism implications" is defined in the Executive Order to include regulations that 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." This rule does not have Federalism implications. This nondiscretionary action is required by the Inflation Adjustment Act and will have no substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, Executive Order 13132 does not apply to this rule.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

The Regulatory Flexibility Act applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553, or any other statute. See 5 U.S.C. 601-612. The Regulatory Flexibility Act does not apply to this final rule because a notice-and-comment rulemaking process is not required for the reasons stated above.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the Corps to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative

if the agency publishes with the final rule an explanation why that alternative was not adopted. Before the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final rule does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, this final rule is not subject to the requirements of Section 203 of UMRA. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards

are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

This rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the

development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. The rule imposes no new substantive obligations on tribal governments but instead merely adjusts the value of current statutory civil monetary penalties to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute and OMB guidance, and the Corps has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Therefore, Executive Order 13175 does not apply to this rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this rule. This final rule does not constitute a major Federal action significantly affecting the quality of the human environment because it merely increases the value of statutory civil monetary penalties to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute and OMB guidance, and the Corps has no discretion to vary the amount of the adjustment.

Appropriate environmental documentation has been, or will be, prepared for each permit action that is subject to the civil penalty process. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for this final rule.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of

their race, color, or national origin. This rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. This rule relates solely to the adjustments to civil penalties to account for inflation.

Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule relates only to the adjustments to civil penalties to account for inflation. This rule is consistent with current agency practice, does not impose new substantive requirements, and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (Water), Water pollution control, Waterways.

Dated: October 4, 2017. Approved by: _____

Douglas W. Lamont,

Senior Official Performing the Duties of the Assistant Secretary of the Army (Civil Works)

For the reasons set forth in the preamble, the Corps amends 33 CFR part 326 as follows:

PART 326--ENFORCEMENT

1. The authority citation for part 326 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

2. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

§ 326.6 Class I administrative penalties.

(a) Introduction. (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under Section 309(g) of the Clean Water Act, judicially-imposed civil penalties under Section 404(s) of the Clean Water Act, and Section 205 of the National Fishing Enhancement Act. Under Section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $20,966 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $52,414. Under Section 404(s)(4) of the Clean Water Act, judicially-imposed civil penalties may not exceed $52,414 per day for each violation. Under Section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $22,957 for each violation.

Environmental Statute and U.S. Code Citation	**Statutory Civil Monetary Penalty Amount for violations that occurred after November 2, 2015, and are assessed on or after [Insert Effective Date]**
Clean Water Act (CWA), Section 309(g)(2)(A), 33 U.S.C. 1319(g)(2)(A)	$20,966 per violation, with a maximum of $52,414
CWA, Section 404(s)(4), 33 U.S.C. 1344(s)(4)	Maximum of $52,414 per day for each violation
National Fishing Enhancement Act, Section 205(e), 33 U.S.C. 2104(e)	Maximum of $22,957 per violation

* * * * *

[FR Doc. 2017-22218 Filed: 10/12/2017 8:45 am; Publication Date: 10/13/2017]