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DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

33 CFR Part 207

Civil Monetary Penalty Inflation Adjustment Rule

[COE-2019-0002]

RIN 0710-AB10

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing this final rule to adjust a civil monetary penalty under the Rivers and Harbors Appropriation Act of 1922 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.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, the Corps will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number COE-2019-0002, by any of the following methods:

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

Email: Forrest.B.Vanderbilt@usace.army.mil. Include the docket number, COE-2019-0002, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: CECW-NDC (Forrest B. Vanderbilt), Casey Building, 7701 Telegraph Road, Alexandria, VA 22315.

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

Instructions: Direct your comments to docket number COE-2019-0002. 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 email. 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 email directly to the Corps without going through regulations.gov, your email 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: Dr. Forrest B. Vanderbilt at 703-428-6288 or by email at Forrest.B.Vanderbilt@usace.army.mil or access the U.S. Army Corps of Engineers Navigation and Civil Works Decision Support Home Page at http://www.iwr.usace.army.mil/About/Technical-Centers/NDC-Navigation-and-Civil-Works-Decision-Support/.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Corps is publishing this final rule to adjust a civil monetary penalty 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 for civil penalties under 33 U.S.C. 555. Accordingly, the Corps is combining both the "catch-up" adjustment that would have become effective by August 1, 2016, and the three annual adjustments for 2017, 2018, and 2019 in this final rule. The rule will apply prospectively, to penalty assessments beginning on its effective date, [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Subsequently, the Corps intends to publish annual adjustments as required by the Inflation Adjustment Act, no later than January 15 of each calendar year.

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. The adjustment criteria is provided by the Inflation Adjustment Act for the initial "catch-up" adjustment, the December 16, 2016, Office of Management and Budget (OMB) Memorandum regarding the "Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015", the December 15, 2017, OMB Memorandum regarding the "Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," and the December 14, 2018, OMB Memorandum regarding the "implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015." The 2016 catch-up adjustment and the 2017, 2018, and 2019 annual adjustments for inflation will increase the maximum civil penalty under 33 U.S.C. 555 to $5,732 per violation.

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 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 accordingly, 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. Although the Corps finds good cause for issuing this final rule without prior notice and comment, and the Corps has no discretion on this action, the 30-day delayed effective date period does provide the opportunity for the public to voice its concerns if the Corps has overlooked anything. Comments received on this civil penalty rulemaking will generally not be viewed as "adverse."

Section 4 of the Inflation Adjustment Act directs Federal agencies to publish annual penalty inflation adjustments. In accordance with Section 553 of the Administrative Procedure 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,

[1] See OMB Memoranda M-16-06 (Feb. 24, 2016), M-17-11 (Dec. 16, 2016), M-18-03 (Dec. 15, 2017), and M-19-04 (December 14, 2018).

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, December 2017, and December 2018 OMB guidance issued to Federal agencies on the implementation of the 2017, 2018, and 2019 annual adjustments, 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

[2] Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 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.

inflation adjustment Acts"), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The Inflation Adjustment 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, 2018, and 2019 annual inflation adjustments 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 level 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 the civil monetary penalty under 33 U.S.C. 555. Column (3) sets out the year the Corps' civil monetary penalty was 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, 2018, and 2019 Annual Inflation Adjustments

The Office of Management and Budget (OMB) issued guidance on calculating the 2017 and 2018 annual inflation adjustments. See December 14, 2018, Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, OMB, Subject: Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; December 15, 2017, Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, OMB, Subject: Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; 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 Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted, which is 1.01636. Likewise, the OMB provided to agencies the cost-of-living adjustment multiplier for 2018, based on the CPI-U for the month of October 2017, not seasonally adjusted, which is 1.02041. More recently, the OMB provided to agencies the cost-of-living adjustment multiplier for 2019, based on the CPI-U for the month of October 2018, not seasonally adjusted, which is 1.02522.

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. For 2018, agencies are similarly required to multiply each applicable penalty by the multiplier, 1.02041, and round to the nearest dollar. Lastly, for 2019, agencies are required to multiply each applicable penalty by the multiplier, 1.02522, 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. Row (9) in Table 1 sets out the 2017 Inflation Adjustment Multiplier while row (10) sets out the 2018 Inflation Adjustment Multiplier. Row (11) sets out the new penalty level which takes effect 30 days after the date of publication in the Federal Register.

TABLE 1:

1. Citation	Rivers and Harbors Appropriation Act of 1922, 33 U.S.C. 555
2. Current civil monetary penalty (CMP) amount established by law	Maximum of $2,500 per violation
3. Year CMP enacted or last adjusted by law	1986
4. Inflation factor for year in row (3)	2.15628
5. Adjusted CMP--& amount in row (2) x factor in row (4)	Maximum of $5,391 per violation
6. CMP amount as of Nov. 2, 2015	Maximum of $2,500 per violation
7. CMP Cap--2.5 x amount in row (6)	Maximum of $6,250 per violation
8. Catch-up CMP—lesser of row (5) or (7)	Maximum of $5,391 per violation
2017 Inflation adjustment multiplier	1.01636
2018 Inflation adjustment multiplier	1.02041
2019 Inflation adjustment multiplier	1.02522
CMP Amount as of the Effective Date of this Rule	Maximum of $5732 per violation

In sum, under this final rule, the maximum penalty for violations under 33 U.S.C. 555 will increase from $2,500 per violation to $5,732.

This rule will not result in any additional costs to implement the Corps Navigation Program because the civil penalty in 33 U.S.C. 555 has been in effect since 1986 when Congress amended Section 11 of the Rivers and Harbors Appropriation Act of 1922 to provide for the assessment of civil penalties. This rule merely adjusts the value of a current statutory civil penalty to reflect and keep pace with the levels originally set by Congress when the statute was amended, as required by the Inflation Adjustment Act. This rule will result in additional costs to the person or entity receiving remuneration for the movement of vessels or for the transportation of goods or passengers on the navigable waters who do not comply with the statement and reporting requirements under 33 U.S.C. 555 and 33 CFR 207.800, because it increases the maximum penalty amount to $5,732 for each violation. 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 Reduction Act (44 U.S.C. 3501 et seq.). This action merely increases the level of a statutory civil penalty that could be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of a Corps-administered statute and its 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 navigation program, the collection of commercial statistics pertaining to rivers, harbors and waterways, and annual reports thereof to Congress, are required by the River and Harbor Act of June 23, 1866 (14 Stat. 70), the act of February 21, 1891 (26 Stat. 766), the River and Harbor Act of June 13, 1902 (32 Stat. 376), the River and Harbor Act of July 25, 1912 (937 Stat. 201), the River and Harbor Act of September 22, 1922 (42 Sta.1043), and Pub. L. No. 16, February 10, 1932 (47 Stat. 42).2, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710-0006). 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 a nondiscretionary adjustment to an existing civil monetary penalty 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 a civil monetary penalty, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs"

This rule is not significant under EO 12866, therefore, it is not subject to the requirements of EO 13771.

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), Public Law 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 a current statutory civil monetary penalty 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.

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 a civil penalty 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 207

Navigation (water), Penalties, Reporting and recordkeeping requirements, Waterways.

Dated: June 19, 2019.

Approved by:

R. D. James,

Assistant Secretary of the Army (Civil Works).

For the reasons set forth in the preamble, the Corps amends 33 CFR part 207 as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 is revised to read as follows:

Authority: 33 U.S.C. 1; 33 U.S.C. 555; 28 U.S.C. 2461 note.

2. Amend § 207.800 by revising paragraph (c)(2) to read as follows:

§ 207.800 Collection of navigation statistics.

* * * * *

(c) * * *

(2) Civil penalties. In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by the regulation in this section may also be assessed a civil penalty of up to $5,732 per violation under 33 U.S.C. 555, as amended.

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[FR Doc. 2019-13467 Filed: 7/1/2019 8:45 am; Publication Date: 7/2/2019]