

Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, see Rev. Proc. 2002-9 (2002-1 C.B. 327) and § 601.601(d)(2)(ii)(b) of this chapter). If the taxpayer files a Form 3115 treating the vehicle as property to which section 280F(a) does not apply, the taxpayer will be permitted to treat the change as a change in method of accounting under section 446(e) of the Internal Revenue Code and to take into account the section 481 adjustment resulting from the method change. For purposes of Form 3115, the designated number for the automatic accounting method change authorized for this paragraph (f)(2)(iv) is 89.

#### § 1.280F-7 [Amended]

■ **Par. 8.** Section 1.280F-7 is amended as follows:

■ 1. Paragraph (a)(2)(iii) is amended by removing “§ 1.280F-6T(d)(3)(i)” and adding “§ 1.280F-6(d)(3)(i)” in its place.

■ 2. The second sentence in paragraph (b)(1) is amended by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.

■ 3. Paragraph (b)(2)(i)(B) is amended by removing “§ 1.280F-6T(d)(3)(i)” and adding “§ 1.280F-6(d)(3)(i)” in its place, and by removing “§ 1.280F-6T(d)(1)” and adding “§ 1.280F-6(d)(1)” in its place.

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: June 17, 2004.

**Gregory Jenner,**  
*Acting Assistant Secretary of the Treasury.*  
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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### 33 CFR Part 326

RIN 0710-AA54

#### Civil Monetary Penalty Inflation Adjustment Rule

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is amending its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation

Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I civil penalties to account for inflation since 1989, we are making the initial 10 percent increase under this Act. The Class I civil penalty under the Clean Water Act will not exceed \$11,000 per violation, with a maximum civil penalty amount of \$27,500. Under the National Fishing Enhancement Act, the Class I civil penalty will not exceed \$11,000 per violation. Increasing the maximum amounts of the Class I civil penalties to account for inflation will maintain the deterrent effects of those penalties.

**DATES:** *Effective Date:* July 26, 2004.

**ADDRESSES:** HQUSACE, ATTN: CECW-CO, 441 “G” Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson at 202-761-4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

#### SUPPLEMENTARY INFORMATION:

##### Background

In the August 20, 2003, issue of the **Federal Register** (68 FR 50108) the Corps issued a proposal to amend 33 CFR 326.6(a)(1) to increase its Class I administrative penalties under section 309(g) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. Under section 309(g) of the Clean Water Act, Class I civil penalties can be assessed for violations of the conditions and limitations of permits issued under section 404 of the Clean Water Act. Under section 205(e) of the National Fishing Enhancement Act, Class I civil penalties can be assessed for violations of permits issued under section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Clean Water Act for the construction and management of artificial reefs.

According to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, each Federal agency is required to adjust for inflation the maximum civil monetary penalties that can be imposed pursuant to that agency's statutory authorities. Under section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the initial adjustment is limited to 10 percent of the civil penalty amount. Since we had not made any inflation adjustments for the Class I civil penalties since 33 CFR 326.6 was promulgated in 1989, we are limited to a 10 percent increase for these civil penalties. Therefore, we proposed to increase the Class I civil penalty for

violations of the conditions and limitations of Clean Water Act section 404 permits, so that it may not exceed \$11,000 per violation, with a \$27,500 maximum penalty. We also proposed to increase the Class I civil penalty for violations of permits for the construction and management of artificial reefs under section 205 of the National Fishing Enhancement Act of 1984 so that it may not exceed \$11,000 per violation.

In response to the August 20, 2003, proposal, we received no comments. Therefore, we are amending 33 CFR 326.6 as indicated below.

#### 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 action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* This final rule adjusts our civil penalty amounts to comply with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, this action is not subject to the Paperwork Reduction Act.

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, which expires on December 31, 2004).

#### *Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action" because it does not meet any of these four criteria. This final rule adjusts the Class I civil penalty amounts for violations of permit conditions and limitations for activities that involve discharges of dredged or fill material into waters of the United States and/or the construction and management of artificial reefs in navigable waters.

#### *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 final rule does not have Federalism implications. We do not believe that adjusting our Class I civil penalties to account for inflation will have 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. This final rule does not impose new substantive requirements. In addition, this final rule will not impose any additional substantive obligations on State or local governments since it is applicable only to permittees who violate the conditions and limitations of certain Corps permits. Therefore, Executive Order 13132 does not apply to this final 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.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The Corps regulations at 33 CFR 326.6 had set the Class I civil penalties under section 309(g)(2)(A) at no more than \$10,000 per violation, with a maximum of \$25,000. The Class I civil penalties under section 205 of the National Fishing Enhancement Act could have been up to \$10,000 per violation. The final rule increases those Class I civil penalties by 10 percent, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. The final rule is

consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

#### *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 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. Previously, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act could not exceed \$10,000 per violation, with a \$25,000 maximum. A Class I civil penalty under section 205(e) of the National Fishing Enhancement Act

could not exceed \$10,000 for each violation. This final rule adjusts those civil penalties, through 10 percent increases to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. Under this final rule, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act cannot exceed \$11,000 per violation, with a \$27,500 maximum. Under this final rule, a Class I civil penalty under section 205(e) of the National Fishing Enhancement Act cannot exceed \$11,000 for each violation. This final rule is consistent with current agency practice, 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 final 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.

#### *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 final 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 final rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

This final 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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 final rule adjusts the civil penalties in 33 CFR 326.6 through 10 percent increases to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this final 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 final rule. This final rule only revises our Class I civil penalties to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended.

Appropriate environmental documentation has been, or will be, prepared for each permit action that is subject to the Class I administrative penalty process.

#### *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 final 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 final 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 final rule relates solely to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation.

#### *Executive Order 13211*

This final 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 final rule relates only to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. This final 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: June 18, 2004.

**Carl A. Strock,**

*Major General, U.S. Army, Director of 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 33 CFR part 326 is revised 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, 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 \$11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed \$27,500. Under section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed \$11,000 for each violation.

\* \* \* \* \*

[FR Doc. 04-14396 Filed 6-24-04; 8:45 am]

BILLING CODE 3710-92-P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### 33 CFR Part 334

#### United States Navy Restricted Area, Coasters Harbor Island, Naval Station Newport, RI

**AGENCY:** United States Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area on the east side of the East Passage of Narragansett Bay around Coasters Harbor Island in the vicinity of Naval Station Newport. This amendment would prohibit vessels and persons from entering the waters immediately adjacent to Coasters Harbor Island and enable the Navy to enhance safety and security around Coasters Harbor Island. It will create an area of separation between general navigation on the East Passage of Narragansett Bay and Naval Station Newport. The amendment is necessary to safeguard government personnel and property plus U.S. government contractor facilities located onboard Naval Station Newport from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of Navy use and security of the area.

**DATES:** *Effective Date:* July 26, 2004.

**ADDRESSES:** U. S Army Corps of Engineers, ATTN: CECW-CO, 441 G Street, NW, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kirk Stark, Headquarters Regulatory Branch, Washington, DC at (202) 761-5904, or Mr. Michael J. Elliott, Corps of Engineers, New England District, Regulatory Branch, at (978) 318-8131 or (800) 343-4789.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the River and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR Part 334 by adding Section 334.82 which establishes a restricted area in the navigable waters immediate adjacent to Coasters Harbor Island and enclosing the island and mainland shoreline of Naval Station Newport from Coddington Point south to the Naval Hospital on the eastern side of the East

Passage of Narragansett Bay in Newport, Rhode Island. By establishment of the restricted area the Navy can better protect the Naval War College and vessels and personnel stationed at the facility and the general public. The regulations will allow the Navy to keep persons and vessels out of the area at all times, except with the permission of the Commanding Officer Naval Station Newport, USN Newport, Rhode Island or his/her authorized representative.

#### Procedural Requirements

##### a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

##### b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

##### c. Review Under the National Environmental Policy Act

The New England District has prepared an Environmental Assessment (EA) for this action. The District has concluded, based on the minor nature of the additional restricted area, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the New England District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

##### d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 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.