

After considering the economic impacts of the proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. Currently, the Corps regulations at 33 CFR 326.6 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 current Class I civil penalties under section 205 of the National Fishing Enhancement Act can be up to \$10,000 per violation. The proposed 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 proposed 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 the proposed 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. Currently, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act may 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 may not exceed \$10,000 for each violation. The proposed 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. The proposed 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, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed 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 (the 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.

The proposed 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 proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed 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."

The proposed 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. Currently, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act may not exceed \$10,000 per violation, with a \$25,000 maximum for any Class I civil penalty. In that subsection of the Corps regulations, a civil penalty under section 205(e) of the National Fishing Enhancement Act may not exceed \$10,000 for each violation. The proposed rule adjusts those civil