

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, as amended, it has been determined that the final regulations are a "significant regulatory action" in light of the provisions of paragraph (4) above. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the development of an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "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." Although the final regulations define the relationships between the Federal and State partners, it is limited to implementation of the Comprehensive Everglades Restoration Plan. It will not 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, within the meaning of Executive Order 13132. Nevertheless, the Corps of Engineers has consulted closely with the State and local officials in developing the final regulations.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*) 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 the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA

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; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. We certify that this action will not have a significant economic impact on a substantial number of small entities. The final regulations only establish processes and governmental relationships that will be used for implementation of the Comprehensive Everglades Restoration Plan.

E. Unfunded Mandates Reform Act

We have determined in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) The final regulations will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they agree to act as a non-Federal sponsor for implementation of projects for the Comprehensive Everglades Restoration Plan. The final regulations do not establish new or different requirements for non-Federal sponsors for implementation of projects for the Comprehensive Everglades Restoration Plan. The Savings Clause ensures that small governments, including public water utilities, will not be impacted by the loss of an existing legal source of water, or existing levels of service for flood protection that were in effect on the date of enactment of WRDA 2000, and in accordance with applicable law.

(b) The final regulations will not produce a Federal mandate of \$100 million or greater in any year, and therefore, do not constitute a "significant regulatory action" under the Unfunded Mandates Reform Act. The final regulations define processes and relationships between the Federal and State partners in implementing the Comprehensive Everglades Restoration Plan. The regulations do not affect the cost sharing requirements for non-Federal sponsors in implementing the Plan and therefore, impose no new obligations on State or local governments.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the 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. These regulations do not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

G. Executive Order 13045

Executive Order 13045, as amended, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was initiated after April 21, 1997, or for which a notice of proposed rulemaking was published after April 21, 1998; (2) is determined to be "economically significant" as defined under Executive Order 12866, and (3) 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 all three criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that were considered. The final regulations are not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The final regulations establish processes for the implementation of the Comprehensive Everglades Restoration Plan and define the relationships between the Federal and State partners for implementation. Furthermore, the regulations do not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13175

Under Executive Order 13175, we may not issue a regulation that has substantial, direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of powers and responsibilities between the Federal government and Indian tribes, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct