

compliance cost incurred by the Tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires us to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." The final regulations are required by section 601(h)(3) of WRDA 2000. Additionally, the final regulations do not impose significant compliance costs on any Indian Tribes. The regulations establish processes for the implementation of the Comprehensive Everglades Restoration Plan and define the relationships between the implementing entities. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to these final regulations. However, the Corps of Engineers recognizes that two Indian Tribes, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida, have a significant direct interest in the implementation of the CERP and the framework for its implementation that will be established by these programmatic regulations. We have thus consulted extensively with these Tribes in the development of the regulations, and have included requirements for continued consultation in all significant project implementation components, including program-wide guidance memoranda, Project Management Plans, Program Management Plans, Project Implementation Reports, Project Operating Manuals, the System Operating Manual, and the Master Implementation Sequencing Plan. These Tribes also are included in the Leadership Group of RECOVER and participate in the Project Delivery Teams and the South Florida Ecosystem Restoration Task Force, which has played and will continue to play a consultative role on many aspects of CERP implementation. Finally, § 385.10(b) includes a general requirement for consultation with the Tribes "throughout the implementation process."

I. Executive Order 12630

In accordance with Executive Order 12630 entitled "Governmental Actions and Interference with Constitutionally Protected Property Rights," the final regulations will not effect a taking of private property or otherwise have taking implications. Therefore, a takings implication assessment is not required. The final regulations establish processes to be used in implementing the Comprehensive Everglades Restoration Plan and in and of itself does not address property needs.

J. Civil Justice Reform

In accordance with Executive Order 12988, we have determined that the final regulations do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The final regulations establish processes to be used in implementing the Comprehensive Everglades Restoration Plan and define the relationships between the governmental entities that will implement the Plan.

K. Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) that applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because the final regulations are not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

L. Executive Order 13272

On August 13, 2002, the President issued an Executive Order (E.O. 13272) that requires that agencies review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided for in the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) We have determined 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.

M. Environmental Documentation

As required by the National Environmental Policy Act (NEPA), the Department of the Army prepares appropriate environmental

documentation for its activities affecting the quality of the human environment. We have determined that the final regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for the final regulations. One commenter expressed the view that an Environmental Impact Statement was necessary for the regulations. The Corps of Engineers has prepared appropriate environmental documentation, including a Programmatic Environmental Impact Statement, for the Comprehensive Everglades Restoration Plan. Today's final regulations do not implement any of the features of the Plan. Rather, the final regulations identify the processes to be followed in implementing features of the Plan. Moreover, the final regulations establish requirements for the preparation of appropriate environmental documentation as part of the implementation process. Accordingly, we continue to believe that an EIS is not warranted.

List of Subjects in 33 CFR Part 385

Environmental protection, Flood control, Intergovernmental relations, Natural resources, Water resources, Water supply.

Dated: October 30, 2003.

John Paul Woodley, Jr.,

*Assistant Secretary of the Army (Civil Works),
Department of the Army.*

■ Accordingly, as set forth in the preamble, the Army Corps of Engineers adds 33 CFR part 385 as follows:

■ Add part 385 to read as follows:

PART 385—PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Subpart A—General Provisions

Sec.

385.1 Purpose of the programmatic regulations.

385.2 Applicability of the programmatic regulations.

385.3 Definitions.

385.4 Limitation on applicability of programmatic regulations.

385.5 Guidance memoranda.

385.6 Review of programmatic regulations.

385.7 Concurrency statements.

Subpart B—Program Goals and Responsibilities

Sec.

385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.

385.9 Implementation principles.