the NYMEX price between those two points.

(2) You may use the differential you propose until MMS prescribes a different differential.

(3) If MMS prescribes a different differential, you must apply MMS'' differential to all periods for which you used your proposed differential. You must pay any additional royalties owed resulting from using MMS'' differential plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(d)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a), (b), or (c) of this section, also adjust the NYMEX price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point approved by MMS or BLM, as applicable. Make this adjustment only if and to the extent that such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil as adjusted is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), (c), and (d)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 2.5 cents per one-tenth percent difference in sulfur content, unless MMS approves a higher adjustment.

10. Section 206.118 is deleted.

11. In § 206.119, the first sentence of paragraph (c) is removed.

12. Section 206.121, the section heading and the first sentence are revised to read as follows:

§ 206.121. Is there any grace period for reporting and paying royalties?

You may adjust royalties reported and paid for the three production months beginning June 1, 2000, without liability for late payment interest if those adjustments are reported before [THE DATE THAT IS 90 DAYS AFTER THE PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

* * * * *

PART 210—FORMS AND REPORTS

Subpart B—Oil, Gas, and Sulphur—General

13. The authority for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396d, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 2506(a).

14. In § 210.53, a new paragraph (c) is added to read as follows:

§ 210.53. Reporting instructions.

* * * * *

(c) This paragraph applies if an operator under a joint operating agreement is also a designee and reports and pays royalty on behalf of one or more working interest owners from whom the operator buys production. On the Form MMS–2014, the operator must report the following information on separate lines:

(1) The share of the production the operator purchased from each working interest owner and the associated royalty payment; and

(2) The operator's own share of production and the associated royalty payment.

[FR Doc. 03–21217 Filed 8–19–03; 8:45 am]

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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: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend 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 proposing to make the initial 10 percent increase under this Act. The proposed adjusted 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 proposed adjusted 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: Submit comments on or before October 6, 2003.

ADDRESSES: You may submit comments electronically, by mail, or through hand delivery or courier. Send electronic comments via e-mail to *cecwor@usace.army.mil*. Electronic comments should be submitted in ASCII format, to ensure that those comments can be read. Please avoid the use of special characters or encryption when providing electronic comments. Mail comments to HQUSACE, ATTN: CECW–OR, 441 ''G'' Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4598 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

On December 8, 1989, (54 FR 50709) the Corps issued final regulations at 33 CFR 326.6 for procedures for the initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act. 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 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. Our current regulations at 33 CFR 326.6(a)(1) reflect the Class I civil penalty amounts stated in those statutes.

As stated in 33 CFR 326.6(a)(1), Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act cannot exceed $10,000 per violation, with a maximum Class I civil penalty of $25,000. In that subsection, the Class I civil penalty for a violation of a permit issued in accordance with section 205 of the National Fishing Enhancement Act cannot exceed $10,000 for each violation.

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 have 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 are proposing to increase the Class I civil penalty for violations of the conditions and limitations of Clean Water Act section 404 permits to $11,000 per violation, with a $27,500 maximum penalty. We are also proposing 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 to $11,000 per violation.

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 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.* The proposed 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 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 the proposed rule is not a ''significant regulatory action'' because it does not meet any of these four criteria. The proposed 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.''

The proposed rule does not have Federalism implications. We do not believe that adjusting the 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. The proposed rule does not impose new substantive requirements. In addition, the proposed change 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 proposed 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 proposed 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 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

penalties through a 10 percent increase 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 proposed 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 proposed rule. The proposed 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 subjected to the Class I administrative penalty process.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added 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**. The proposed 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.

The proposed 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. The proposed 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

The proposed 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. The proposed 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. The proposed 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: August 11, 2003.

Robert H. Griffin,

Major General, U.S. Army, Deputy Commander.

For the reasons set forth in the preamble, the Corps is proposing to amend 33 CFR 326.6(a)(1) 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. 03–21331 Filed 8–19–03; 8:45 am]
BILLING CODE 3710–92–U

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Employee Stock Ownership Plans (ESOPs) Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Cost Accounting Standards Board (CASB), Office of Federal Procurement Policy, invites public comments on proposed amendments to the Cost Accounting Standards (CAS), ''Cost accounting standard for composition and measurement of pension cost'', and ''Accounting for the cost of deferred compensation''. These proposed amendments address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts. These proposed amendments provide criteria for measuring the costs of ESOPs and their assignment to cost accounting periods. The allocation of a contractor's assigned ESOP costs to contracts and subcontracts is addressed in other Standards. The proposed amendments also clarify that accounting for the costs of ESOPs will be covered by the provisions of ''Accounting for the cost of deferred compensation'' and not by any other Standard.

DATES: Comments must be in writing and must be received by November 18, 2003.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to: