

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 140**

[FRL-5942-4]

RIN 2040-AC61

**Marine Sanitation Device Standard—Establishment of Drinking Water Intake No Discharge Zone(s) Under Section 312(f)(4)(B) of the Clean Water Act**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Clean Water Act (CWA) authorizes the Administrator of the Environmental Protection Agency (EPA) to establish drinking water intake no discharge zones upon application by a State. Within these zones, the discharge of sewage from a vessel, whether treated or untreated, is prohibited. These no discharge zones protect the quality of public drinking water supplies in those areas by decreasing the possibility of contamination from sewage discharged from vessels.

This provision was added to section 312 of the Clean Water Act in 1977, after EPA had promulgated regulations on application requirements for other types of no discharge zones. Before today, EPA had not promulgated regulations specific to application requirements for drinking water intake no discharge zones under the CWA. Applicants for drinking water intake zones, therefore, have followed application requirements which are not tailored to drinking water intakes, and have provided more information than needed for these no discharge zones. Today, EPA is promulgating application requirements specific to drinking water intake no discharge zones. The effect of today's rule would be to more specifically tailor the type of information required in an application for a drinking water intake no discharge zone and reduce the amount of information a State must submit.

**EFFECTIVE DATE:** These regulations take effect on February 9, 1998.

**ADDRESSES:** The official record for this rulemaking is available for inspection at EPA's Water Docket, Rm M2616, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. For access to the Docket, call (202) 260-3027 between 9 a.m. and 3:30 p.m., Monday through Friday, excluding legal holidays for an appointment. EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Deborah Lebow, Oceans and Coastal Protection Division, United States Environmental Protection Agency, 4504F, 401 M St. S.W., Washington, D.C. 20460, (202) 260-8448.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially affected by this action include States who seek to establish a drinking water intake no discharge zone where vessel sewage is prohibited in a specified area, under section 312(f) of the Clean Water Act. Potentially affected entities include:

| Category                        | Examples of potentially affected entities |
|---------------------------------|---|
| State/local/tribal governments. | States applying for no discharge zones.   |

**Public Comments**

EPA is today clarifying the application requirements for designating drinking water intake no discharge zones under section 312 of the CWA. This rule only applies to States requesting approval of drinking water intake no discharge zones and has no direct effect on any regulated entity. These requirements are promulgated pursuant to section 312(f)(4)(B) of the CWA (33 U.S.C. 1322(f)(4)(B)), which provides that "Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." The effect of this rule is to set out application requirements specific to drinking water intake no discharge zones. It will reduce the amount of information States are required to submit to EPA under existing 40 CFR 140.4(b) to establish these no discharge zones.

EPA proposed this change on October 16, 1996 (61 FR 54014-54017). The background and details pertaining to this change are detailed there and will not be repeated here. Today EPA is promulgating the regulations as they were originally proposed.

EPA received four sets of comments on the proposal all of which supported the proposal in full. One of the commenters, however, suggested that EPA take a more active enforcement role, and consider prohibiting other types of discharges such as spills, paints when a boat is refueling or in repair, in addition to prohibiting sewage discharge. Since Section 312 addresses vessel sewage, this comment is beyond the scope of these regulations and will not be addressed here. The Agency

notes, however, that spills are addressed in other parts of the CWA (e.g., section 311). Another commenter asked that we require NOAA nautical charts rather than USGS maps. We have made the change to require NOAA charts where applicable.

States are encouraged to establish drinking water intake no discharge zones that are consistent with source water protection areas for surface water systems delineated pursuant to Section 1453(a)(2)(A) of the Safe Drinking Water Act Amendments of 1996 and the forthcoming Source Water Assessment and Protection guidance. In fact, States could incorporate these no discharge zones into source water assessment programs and pay for their delineation with funds set aside from the new Drinking Water State Revolving Fund.

**Compliance With Other Laws and Executive Orders**

*A. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an RFA. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Today's rule simplifies existing requirements and should have no direct effect on small entities. The rule, which reduces existing regulatory requirements, applies only to States, which do not qualify as small entities.

*B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA prepared an Information Collection Request (ICR) document (ICR No. 1791.01) and has assigned OMB control number 1791.01. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260-2740.

This information is required from States who wish to designate a drinking water intake no discharge zone under CWA Section 312(f)(4)(B). It allows the

EPA Administrator to evaluate these State applications for designating no discharge zones to ensure that the discharge area is the appropriate size to protect drinking water intake zones from vessel sewage. This information is not of a confidential nature.

Under existing regulatory provisions, applications for drinking water intake no discharge zones have an estimated reporting burden averaging 167 hours per application and an estimated annual record keeping burden of one hour per applicant at approximately \$82 per application. Under the new regulations, the reporting burden is reduced to 101 hours per application and the annual record keeping burden per application is estimated at one hour at approximately \$82 per application. This rule reduces the reporting burden by 66 hours per application. 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. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is today amending the table of currently approved information collection request control numbers to include the OMB control number for the information collection request for this rule. This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

#### C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory

action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The 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.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### D. The Unfunded Mandates Reform Act, and Executive Order 12875

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 UMRA, EPA 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 an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA 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 EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it 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 EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that today's regulation does not impose any enforceable duties upon the private sector. Therefore, this final rulemaking is not a "private sector mandate."

Further, EPA has determined that today's action does not include a Federal mandate that may result in expenditures of \$100 million or more by either State, local, and tribal governments, in the aggregate, or to the private sector in any one year. This rulemaking should reduce the reporting and recordkeeping burden on State applicants. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA. It is codifying in 40 CFR 140.4(c) that which already exists in the statute and is self-implementing. Therefore, this rule does not significantly or uniquely affect small governments. Executive Order 12875 requires that, to the extent feasible and permitted by law, no Federal agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless funds necessary to pay the direct costs incurred by the State, local or tribal government in complying with the mandate are provided by the Federal government. EPA has determined that the requirements of Executive Order 12875 do not apply to today's rulemaking, since no mandate is created by this action.

#### E. Small Business Regulatory Enforcement Fairness Act of 1996

Under 5 U.S.C. 801(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to

use voluntary consensus standards in its 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, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

The Agency has found that this final rule does not contain any technical standards subject to the NTTAA.

**List of Subjects**

*40 CFR Part 9*

Reporting and recordkeeping requirements.

*40 CFR Part 140*

Environmental protection, Drinking water intake zones, Marine sanitation device standard, No discharge areas.

Dated: December 22, 1997.

**Carol M. Browner,**  
*Administrator.*

For the reasons set forth in the preamble, 40 CFR parts 9 and 140 are amended as follows:

**PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. P.973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In §9.1 the table is amended by adding a new heading and entry in numerical order to read as follows:

**§9.1 OMB approvals under the Paperwork Reduction Act.**

| 40 CFR citation                    | OMB control No. |
|------------------------------------|-----------------|
| * * * * *                          |                 |
| Marine Sanitation Device Standard: |                 |
| Part 140 .....                     | 2040–0187       |
| * * * * *                          |                 |

**PART 140—[AMENDED]**

3. The authority citation for part 140 is revised to read as follows:

**Authority:** 33 U.S.C. 1322, as amended.

4. Section 140.4 is amended:

a. In paragraph (a) introductory text, in the first sentence, by revising the first word “A” to read “a” and by adding to the beginning of the sentence the words “Prohibition pursuant to CWA section 312(f)(3):”.

b. In paragraph (b) introductory text, in the first sentence, by revising the first word “A” to read “a” and by adding to the beginning of the sentence the words “Prohibition pursuant to CWA section 312(f)(4)(A):” and by removing from the first sentence the words “312(f)(4)” and adding, in their place, the words “312(f)(4)(A)”.

c. In paragraph (b)(1) by removing the word “prohibited,” and adding in its place the words “prohibited pursuant to CWA Section 312(f)(4)(A):”, and by redesignating paragraph (b)(1)(ii) as new paragraph (c)(4)(i) and adding and reserving paragraph (b)(1)(ii).

d. By adding the following new paragraph (c)(1), (c)(2), (c)(3) and (c)(4) introductory text; and by adding and reserving (c)(4)(ii) to read as follows:

**§ 140.4 Complete prohibition.**

(c)(1) *Prohibition pursuant to CWA section 312(f)(4)(B):* A State may make written application to the Administrator of the Environmental Protection Agency under section 312(f)(4)(B) of the Act for the issuance of a regulation establishing a drinking water intake no discharge zone which completely prohibits discharge from a vessel of any sewage,

whether treated or untreated, into that zone in particular waters, or portions thereof, within such State. Such application shall:

(i) Identify and describe exactly and in detail the location of the drinking water supply intake(s) and the community served by the intake(s), including average and maximum expected amounts of inflow;

(ii) Specify and describe exactly and in detail, the waters, or portions thereof, for which a complete prohibition is desired, and where appropriate, average, maximum and low flows in million gallons per day (MGD) or the metric equivalent;

(iii) Include a map, either a USGS topographic quadrant map or a NOAA nautical chart, as applicable, clearly marking by latitude and longitude the waters or portions thereof to be designated a drinking water intake zone; and

(iv) Include a statement of basis justifying the size of the requested drinking water intake zone, for example, identifying areas of intensive boating activities.

(2) If the Administrator finds that a complete prohibition is appropriate under this paragraph, he or she shall publish notice of such finding together with a notice of proposed rulemaking, and then shall proceed in accordance with 5 U.S.C. 553. If the Administrator’s finding is that a complete prohibition covering a more restricted or more expanded area than that applied for by the State is appropriate, he or she shall also include a statement of the reasons why the finding differs in scope from that requested in the State’s application.

(3) If the Administrator finds that a complete prohibition is inappropriate under this paragraph, he or she shall deny the application and state the reasons for such denial.

(4) For the following waters the discharge from a vessel of any sewage, whether treated or not, is completely prohibited pursuant to CWA section 312(f)(4)(B):

(i) \* \* \*

(ii) (Reserved).

[FR Doc. 98–431 Filed 1–7–98; 8:45 am]

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