

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 9 and Chapter VII****DEPARTMENT OF DEFENSE****40 CFR Chapter VII**

[FRL-6335-5]

RIN 2040-AC96

**Uniform National Discharge Standards for Vessels of the Armed Forces**

**AGENCY:** Environmental Protection Agency (EPA) and Department of Defense (DOD).

**ACTION:** Final rule.

**SUMMARY:** This rule applies to discharges incidental to the normal operation of Armed Forces vessels and determines which of these discharges the Armed Forces will be required to control by using a marine pollution control device (MPCD), and which discharges will not require controls.

Today's rule also establishes the mechanism by which States can petition EPA and DOD to review whether or not a discharge should require control by a MPCD or to review a Federal performance standard for a MPCD; and the processes EPA and States must follow to establish no-discharge zones (where any release of a specified discharge is prohibited).

This rule completes the first phase of a three-phase process to set uniform national discharge standards (UNDS) for Armed Forces vessels. This Phase I rule determines the types of vessel discharges that require control by MPCDs and which do not, based on consideration of the anticipated environmental effects of the discharge and other factors listed in the Clean Water Act. Future rulemakings will promulgate the MPCD performance standards for those types of discharges requiring MPCDs (Phase II), and specify the requirements for the design, construction, installation, and use of MPCDs (Phase III).

Uniform national discharge standards will result in enhanced environmental protection because standards will be established for certain discharges that currently are not regulated comprehensively. These standards will also advance the ability of the Armed Forces to better design and build environmentally sound vessels, to train crews to operate vessels in a manner that is protective of the environment, and to maintain operational flexibility both domestically and internationally. In addition, these standards are expected to stimulate the development

of innovative vessel pollution control technology.

**DATES:** The regulation shall become effective June 9, 1999.

**ADDRESSES:** The complete public record for this rulemaking, including responses to comments received during the rulemaking, can be found under docket number W-97-21. The record is available for review at the Office of Water Docket, Room EB-57, 401 M Street SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260-3027 to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Stapleton (U.S. EPA) at (202) 260-0141, or Mr. David Kopack (U.S. Navy) at (703) 602-3594 ext. 243.

**SUPPLEMENTARY INFORMATION:****Regulated Entities**

This rule applies to discharges incidental to the normal operation of Armed Forces vessels in State waters and the contiguous zone, establishes procedures by which States can petition EPA and DOD to review whether a discharge should be controlled or to review a performance standard, and establishes procedures for creating no-discharge zones in State waters. Regulated categories and entities include:

Category	Examples of regulated entities
Federal Government.	Vessels of the Armed Forces, including the Navy, Military Sealift Command, Marine Corps, Army, Air Force, and Coast Guard.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA and DOD are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether a particular category of vessel, discharge from a vessel, or governmental entity is regulated by this action, carefully examine the applicability criteria at 40 CFR 1700.1 in the regulatory text following this preamble. For answers to questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Exclusions**

This rule does not apply to commercial vessels; private vessels; vessels owned or operated by State, local, or tribal governments; vessels

under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation or other federal agencies; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles.

**Supporting Documentation**

The technical basis for this rule is detailed in the "Technical Development Document for Phase I Uniform National Discharge Standards for Vessels of the Armed Forces" (EPA-821-R-99-001), hereafter referred to as the Technical Development Document. This background document is available through EPA's Internet Home Page at <http://www.epa.gov/OST/guide>, or through the UNDS Internet Home Page at <http://206.5.146.100/n45/doc/unds/unds.html>. This document is also available from the National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242; telephone: 1-800-490-9198; Internet: <http://www.epa.gov/ncepi>.

**Overview**

This preamble describes the legal authority, background, technical basis, and other aspects of the final regulation. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble. The regulatory text for this rule (40 CFR Part 1700) follows the preamble.

**Organization of This Document**

- I. Summary of This Rulemaking
  - A. Pollution Control Requirements for Vessel Discharges
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- II. Legal Authority and Background
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- IV. Developments Since Proposal
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  - C. Executive Order 12875: Enhancing the Intergovernmental Partnership
  - D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  - E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act
  - F. Paperwork Reduction Act
  - G. Executive Order 13045
  - H. Endangered Species Act

I. National Technology Transfer and Advancement Act  
 J. Congressional Review Act  
 Appendix to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

## I. Summary of This Rulemaking

### A. Pollution Control Requirements for Vessel Discharges

Today's rule creates a new 40 CFR part 1700 establishing uniform national discharge standards that apply to discharges, other than sewage, incidental to the normal operation of vessels of the Armed Forces. Incidental discharges include effluent from the normal operation of vessel systems or hull protective coatings, but do not

include such things as emergency discharges, air emissions, or discharges of trash. These regulations apply to 39 types of vessel discharges and determine which of those discharges require control through the use of marine pollution control devices (MPCDs). A MPCD is any equipment or management practice installed or used onboard a vessel to control a discharge. Today's rule also identifies discharges that are excluded from any requirement for a MPCD because of their low potential for causing adverse impacts on the marine environment. The preamble for the proposed rule and the Technical Development Document describe these discharges in detail. See 63 FR at 45309–45325 (August 25, 1998).

In today's rule, EPA and DOD are requiring the 25 discharges listed in Table 1 to be controlled by MPCDs. These discharges are defined at 40 CFR 1700.4 in the regulatory text following the preamble, and are described in detail in the preamble for the proposed rule (63 FR at 45309–45318). The preamble for the proposed rule and the Technical Development Document also discuss whether and to what extent the discharges have the potential to cause adverse impacts on the marine environment, the availability of MPCDs to mitigate adverse impacts, and the rationale for requiring the use of MPCDs.

TABLE 1.—DISCHARGES REQUIRING MARINE POLLUTION CONTROL DEVICES

Aqueous Film-Forming Foam.  
 Catapult Water Brake Tank and Post-Launch Retraction Exhaust.  
 Chain Locker Effluent.  
 Clean Ballast.  
 Compensated Fuel Ballast.  
 Controllable Pitch Propeller Hydraulic Fluid.  
 Deck Runoff.  
 Dirty Ballast.  
 Distillation and Reverse Osmosis Brine.  
 Elevator Pit Effluent.  
 Firemain Systems.  
 Gas Turbine Water Wash.  
 Graywater.  
 Hull Coating Leachate.  
 Motor Gasoline Compensating Discharge.  
 Non-Oily Machinery Wastewater.  
 Photographic Laboratory Drains.  
 Seawater Cooling Overboard Discharge.  
 Seawater Piping Biofouling Prevention.  
 Small Boat Engine Wet Exhaust.  
 Sonar Dome Discharge.  
 Submarine Bilgewater.  
 Surface Vessel Bilgewater/Oil-Water Separator Discharge.  
 Underwater Ship Husbandry.  
 Welldeck Discharges.

This rule imposes no controls on the 14 types of discharges listed in Table 2. These 14 discharges are defined at 40 CFR 1700.5 in the regulatory text following this preamble. Based on the information in the record, these

discharges exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that it is not reasonable and practicable to require the use of MPCDs to mitigate adverse

impacts on the marine environment. The preamble for the proposed rule (63 FR at 45318–45325) and the Technical Development Document describe each of these discharges and the reasons why MPCDs are not required.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS

Boiler Blowdown.  
 Catapult Wet Accumulator Discharge.  
 Cathodic Protection.  
 Freshwater Lay-up.  
 Mine Countermeasures Equipment Lubrication.  
 Portable Damage Control Drain Pump Discharge.  
 Portable Damage Control Drain Pump Wet Exhaust.  
 Refrigeration/Air Conditioning Condensate.  
 Rudder Bearing Lubrication.  
 Steam Condensate.  
 Stern Tube Seals and Underwater Bearing Lubrication.  
 Submarine Acoustic Countermeasures Launcher Discharge.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS—Continued

Submarine Emergency Diesel Engine Wet Exhaust.  
Submarine Outboard Equipment Grease and External Hydraulics.

In developing this rule, EPA and DOD considered the seven factors listed at CWA 312(n)(2)(B) to determine whether a discharge requires control by a MPCD:

- The nature of the discharge;
  - The environmental effects of the discharge;
  - The practicability of using the MPCD;
  - The effect that installing or using the MPCD would have on the operation or the operational capability of the vessel;
  - Applicable U.S. law;
  - Applicable international standards;
- and
- The economic costs of installing and using the MPCD.

In making the determinations, EPA and DOD assessed each discharge for its potential to cause adverse impacts on the marine environment due to the chemical constituents present in the discharge (including bioaccumulative chemicals of concern), thermal pollution, or by introducing nonindigenous aquatic species. EPA and DOD conducted an extensive data gathering effort to characterize the nature of these discharges. This effort included surveys and consultations involving DOD and Coast Guard personnel with expertise in vessel operations and shipboard systems or equipment generating the discharges. The survey and consultation results were supplemented with sampling, where necessary. Details of these efforts are summarized in the preamble to the proposed rule and in the Technical Development Document. See 63 FR at 45305–45306.

A detailed description of the assessment methodology is presented in the preamble for the proposed rule (63 FR at 45306–45307) and the Technical Development Document. The preamble for the proposed rule and the Technical Development Document also describe the results of the assessment and conclusions about the potential for each discharge to cause adverse impacts on the marine environment.

For each discharge that was determined to have the potential to adversely impact the marine environment, EPA and DOD conducted an initial evaluation of the practicability, operational impact, and economic cost of using a MPCD to control each discharge. The results of the MPCD assessments are presented in the Technical Development Document.

EPA and DOD first determined whether a control technology or management practice is currently in place to control the discharge for environmental protection on any vessel type. The use of existing controls on a vessel was considered sufficient demonstration that at least one reasonable and practicable control is available for at least one vessel type.

For discharges without any existing pollution controls, EPA and DOD analyzed potential pollution control options to determine whether it is reasonable and practicable to require the use of MPCDs. For every discharge that was found to have a potential to cause adverse environmental effects, EPA and DOD identified at least one potential MPCD option that could mitigate the environmental impacts of the discharge from at least one class of Armed Forces vessel. Because of this, EPA and DOD determined for these discharges that it is reasonable and practicable to require a MPCD for at least one vessel type.

This Phase I UNDS rule does not address whether existing control technologies or management practices are adequate to mitigate potential adverse impacts. Because of the diversity of vessel types and designs, these controls are usually not uniformly applied to all vessels generating the discharge. In addition, these existing controls do not necessarily represent the only control options available. In a future rulemaking (UNDS Phase II), EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and develop MPCD performance standards for the discharges requiring control. The Phase II rule may distinguish among vessel types and sizes, between new and existing vessels, and may determine that MPCD standards are not necessary or appropriate for a particular type or age of vessel. See CWA section 312(n)(3)(B) and (C).

Under Executive Order 13089 (63 FR 32701, June 16, 1998), all Federal agencies whose actions may affect U.S. coral reef ecosystems shall identify these actions, and use their programs and authorities to protect and enhance the conditions of such ecosystems. This Phase I rule is only a preliminary step that simply identifies the discharges that will require control and the discharges that will not require control. This rule only makes a final decision for those 14 discharges that will not require

controls. These 14 discharges were excluded from control because they exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that this is not an action that will affect coral reef ecosystems. EPA and DOD will examine the effects of regulated UNDS discharges on coral reefs during Phase II of the UNDS rulemaking, which will establish performance standards for the 25 discharges identified in Phase I as requiring control.

Under Executive Order 13112 (64 FR 6183, Feb 8, 1999), each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As discussed above, during Phase I of the UNDS process, we evaluated all discharges for the potential to introduce invasive species. Any discharges that were identified as having the potential for introducing invasive species are required by this rule to be controlled by a MPCD. During Phase II, we will consider the control of invasive species when setting standards for these discharges.

#### *B. Effect on State and Local Laws and Regulations*

Today's rule affects State and local laws and regulations in several ways. Under CWA section 312(n)(6), States and their political subdivisions are prohibited from adopting or enforcing any State or local statute or regulation with respect to the discharges exempted from control (listed in Table 2) once this rule is in effect, other than to establish no-discharge zones for these discharges. States and their political subdivisions will be similarly prohibited from adopting or enforcing any statutes or regulations affecting the discharges requiring marine pollution control devices (listed in Table 1) once regulations governing MPCDs for those discharges are in effect.

Second, this rule establishes the procedural mechanisms by which a State may petition EPA and DOD to review whether a discharge should be controlled by a MPCD. Finally, this rule codifies the process for establishing no-discharge zones (where any release of a

specified discharge is prohibited) where necessary to protect and enhance the quality of some or all of the waters within a State. These procedures, contained in 40 CFR 1700.6 through 1700.13, are discussed in the preamble for the proposed rule (63 FR at 45326-45328).

## II. Legal Authority and Background

### A. Clean Water Act Statutory Requirements

This regulation is promulgated under the authority of section 312 and 502 of the Clean Water Act (33 U.S.C. 1322 and 1362). The Assistant Secretary of the Navy has been delegated the authority and responsibility of the Secretary of Defense to develop Uniform National Discharge Standards pursuant to section 312 of the Clean Water Act, including authority to sign this final action.

### B. Summary of Public Outreach and Consultation With States, Tribes, and Federal Agencies

In developing this rule, EPA and DOD consulted with other interested Federal agencies, States, and environmental organizations. Other Federal agencies that have been involved in UNDS development include the Coast Guard (for the Department of Transportation), the Department of State, and the National Oceanic and Atmospheric Administration (for the Department of Commerce). The Coast Guard has been involved in all aspects of UNDS development. The other agencies have participated with the DOD, EPA, and the Coast Guard in the UNDS Executive Steering Committee, which is responsible for UNDS policy development and is composed of senior-level managers. Separately, the DOD and EPA have held discussions with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on UNDS matters.

Two mechanisms have been used to consult with States. First, a representative from the Environmental Council of the States (ECOS) is a member of the Executive Steering Committee. ECOS is the national association of State and territorial environmental commissioners and has been established, in part, to provide State positions on environmental issues to EPA. Second, representatives from the Navy (as the lead for the DOD), EPA, and the Coast Guard met with each State expressing an interest in the UNDS development. Information on participation of States in the consultation meetings and the subjects discussed is presented in the Technical Development Document and supporting

documents in the public record for this rule. See "Uniform National Discharge Standards (UNDS) State Consultation Meetings (Round #1) Compendium of Minutes" and "Uniform National Discharge Standards (UNDS) Consultation Meetings (Round #2) Compendium of Minutes."

The Navy and EPA publish a newsletter that contains feature articles on UNDS-related subjects (e.g., nonindigenous species, Navy research and development programs), provides answers to frequently asked questions, and provides an update on recent progress and upcoming events. The newsletter is mailed to State and environmental group representatives, Armed Forces and EPA contacts, and interested members of the general public. The Navy also maintains an UNDS web site on the Internet (<http://206.5.146.100/n45/doc/unds/unds.html>) that provides UNDS legislative information, a summary of the technical and management approach to rule development, and a description of the benefits expected to result from the development of UNDS.

In August 1998, EPA and DOD also sent an informational letter and fact sheet on UNDS to members of EPA's Tribal Operations Committee and 38 intertribal organizations. The Tribal Operations Committee is comprised of 19 Tribal leaders or their Environmental Program Managers (referred to as the "Tribal Caucus") and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator and EPA's Assistant Administrators and Regional Administrators.

## III. Description of Armed Forces Vessels

Section 312(a)(14) of the CWA, as amended by the National Defense Authorization Act of 1996, defines a vessel of the Armed Forces as "(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and (B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel [owned or operated by the DOD]." Section 312 of the CWA defines new vessel and existing vessel as every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the United States. See CWA sections 312(a)(1) and 312(a)(2). Also see 40 CFR 140.1(d).

The scope of the UNDS legislation addresses incidental discharges from

over 7,000 vessels (i.e., ships, submarines, and small boats and craft) of differing designs and mission requirements. The Armed Forces that operate vessels subject to UNDS include the Navy, Military Sealift Command, Army, Marine Corps, Air Force, and Coast Guard. Table 3 summarizes the number of vessels operated by each of these branches of the Armed Forces as of August 1997. Armed Forces vessels and their operating locations are discussed in more detail in the Technical Development Document and in the preamble to the proposed rule. See 63 FR at 45302-45304.

This rule applies only to Armed Forces vessels. This rule does not apply to commercial vessels; privately owned vessels; vessels owned or operated by State, local, or tribal governments; vessels under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation; vessels owned or operated by other Federal agencies that are not part of the Armed Forces; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles. For additional discussion regarding the types of vessels that are beyond the scope of this rule, see the Technical Development Document.

TABLE 3.—NUMBER OF ARMED FORCES VESSELS (AUGUST 1997)

Branch of armed forces	Number of vessels
Navy .....	4,760
Military Sealift Command .....	57
Army .....	334
Marine Corps .....	538
Air Force .....	36
Coast Guard .....	1,445
Total: .....	7,170

## IV. Developments Since Proposal

### A. Peer Review

A technical report was prepared for each of the discharges covered by this rule. These Nature of Discharge (NOD) reports include a discussion of how the discharge is generated, discharge volumes and frequencies, where the discharge occurs, chemical constituents present in the discharge, and relevant regulatory information. The NOD reports also present an assessment of the potential for a discharge to cause an adverse impact on the marine environment. NOD reports for each discharge are included as an appendix

to the Technical Development Document.

NOD reports for five discharges were selected for peer review. Peer reviewers were asked whether the data and process information presented in the NOD reports are sufficient to characterize the discharges; whether the analyses are appropriate for the discharges; and whether the conclusions regarding the discharges' potential for causing adverse environmental impacts are supported by the information presented in the NOD reports.

Comments submitted by the peer reviewers are compiled in the "Peer Review Comments Document for Nature of Discharge Reports," which is in the rulemaking record. Specific responses to peer review comments and how those comments were addressed in developing the final rule are provided in the document titled "Uniform National Discharge Standards for Vessels of the Armed Forces Phase I Response to Peer Review Comments." Except as discussed below, the changes resulting from peer review were largely editorial.

Upon reviewing the comments, EPA and DOD reassessed the steam condensate discharge by comparing the constituent concentrations to chronic, rather than acute, water quality criteria because the discharge can be either intermittent or continuous. The constituents exceeding the chronic criteria are the same as those exceeding the acute water quality criteria. As discussed in the preamble to the proposed rule, EPA and DOD determined that because of the low mass loadings released in the discharge (a fleetwide total of 49 lbs/year copper and 28 lbs/year nickel; the mass discharged in any given port is only a fraction of that total), the steam condensate discharge has a low potential to cause an adverse impact on the marine environment. Comparing the steam condensate discharge to chronic water quality criteria does not change this conclusion.

Several comments addressed the thermal analysis of the steam condensate discharge. The potential for adverse thermal impacts from the steam condensate discharge is discussed below in section IV.B.2 of the preamble.

### B. Public Comments

Only two letters providing comments on the proposed rule were received—both from States. The most significant of these comments addressed:

- The types of MPCDs that should be considered in setting performance standards or the constituents the MPCDs should be designed to remove;

- The methodology used in Phase I to assess the potential for discharges to cause adverse impacts on the marine environment;

- The relationship of UNDS to the establishment of total maximum daily loads (TMDLs) for waterbodies and the imposition of wasteload allocations; and
- The exclusion of National Defense Reserve Fleet vessels from UNDS requirements.

A detailed discussion of EPA and DOD's responses to the comments on the proposed rule is provided in "Response to Public Comments on Proposed Uniform National Discharge Standards, Phase I," which is in the rulemaking record. An overview of the more significant comments is presented below.

#### 1. MPCD Design

The comments regarding MPCDs generally raised issues that will be addressed during the development of the Phase II rule and are beyond the scope of this Phase I rule. For example, the comments suggested that pierside MPCDs should be considered during the development of UNDS and identified certain constituents that MPCDs should be designed to remove (i.e., pathogens in graywater, and non-indigenous aquatic species in dirty ballast water and compensated fuel ballast water). In UNDS Phase II, EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and promulgate MPCD performance standards for the discharges requiring control.

#### 2. Environmental Assessment Methodology

With respect to the comments about the environmental assessment methodology used for this rule, EPA and DOD believe that the analyses performed for this rule are consistent with the requirements of CWA section 312(n) and are sufficient for the purpose of determining which discharges should require the use of a MPCD to mitigate adverse impacts on the marine environment, and to determine for which discharges it is not reasonable and practicable to require the use of a MPCD to mitigate adverse impacts on the marine environment.

In response to public and peer review comments regarding the hydrodynamic model used to evaluate the thermal effects from steam condensate discharges, EPA and DOD reanalyzed the discharge plume characteristics. First, EPA and DOD reassessed the thermal effects model used at proposal to confirm that accurate values had been used for input parameters such as

current velocity and air temperature. This review identified several instances where overly conservative values had been used at proposal (e.g., information in the record shows that a more accurate discharge temperature for modeling thermal effects is 180°F rather than the original 212°F), resulting in overstating the thermal effects. EPA and DOD corrected these values in its modeling for the final rule, as discussed in detail in the comment response documents for public and peer review comments, and in the Technical Development Document.

EPA and DOD also used a more sophisticated model capable of predicting the plume size and temperature, taking into account factors (e.g., tidal effects and turbulent mixing in the water body) that are not adequately taken into account by the model used at proposal. This hydrodynamic and transport model, CH3D, predicts the thermal plume from an aircraft carrier will extend no more than 80 meters from the discharge pipe along the length of the vessel (not extending beyond the end of the ship) and 30 meters away from the vessel.

The thermal plume from other ships typically docked in Bremerton, Washington was also reassessed using these corrected values. The model results indicate that these ships will not generate a thermal plume exceeding Washington State thermal criteria, and that aircraft carriers are the only vessels that may exceed criteria.

Both the original and more sophisticated models continue to overestimate the size of the thermal plume because they do not account adequately for either the mixing that initially occurs as the discharge enters the receiving water or the loss of heat to the atmosphere. However, EPA and DOD note that for an aircraft carrier, the predicted plume would cover only about 5% of the width and 2% of the length (less than 0.1% of the total surface area) of the inlet where the ships are docked. Such a localized plume would have a low potential for interfering with the passage of aquatic organisms in the water body and would have a limited impact on the organisms that reside near the water surface. In addition, because the discharge is freshwater (no salinity) and warmer than the receiving water, the plume floats along the surface of the water and has no significant impact on bottom-dwelling organisms. Therefore, the steam condensate discharge has a low potential to cause adverse impacts on the marine environment and the discharge does not require control by a MPCD.

### 3. TMDL/Wasteload Allocations

One commenter asserted that, where Armed Forces vessels are identified as sources contributing to violations of water quality standards, States should be allowed to impose a wasteload allocation to Armed Forces vessels even if it causes the vessels to install pollution control devices not identified by uniform national discharge standards. EPA and DOD disagree with the commenter's assertion. Even though Armed Forces vessels may discharge chemical substances for which TMDLs are being written, section 312(n)(6) of the CWA preempts States from regulating these discharges once the UNDS regulations are effective, including issuing a wasteload allocation (WLA) for these discharges. A State, however, may avail itself of the provisions in CWA section 312(n)(7) to establish a no-discharge zone, either through State prohibition or EPA prohibition (see 40 CFR 1700.7–1700.10).

It is also noted that the UNDS legislation amended the CWA to exclude from the definition of "pollutant" a "discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 312 of the CWA. CWA § 502(6). Because CWA section 303(d)(1)(C) provides that States establish TMDLs for "pollutants" which the Administrator identifies under section 402(a)(2) as suitable for such calculation, and because Armed Forces vessel discharges are not "pollutants" as that term is defined in the CWA, EPA and DOD interpret the CWA to mean that TMDLs may not be written for discharges incidental to the normal operation of a vessel of the Armed Forces.

### 4. National Defense Reserve Fleet (NDRF) Vessels

In its comments, one State questioned the reason for excluding NDRF vessels from the requirements of UNDS. Under CWA section 312(a)(14), a vessel owned or operated by the Department of Transportation is not defined as a "vessel of the Armed Forces"—and thus is not subject to uniform national discharge standards—unless it has been designated by the Secretary of Transportation as being "a vessel equivalent to a vessel [owned or operated by the Department of Defense]." NDRF vessels are owned or operated by the Department of Transportation, and they have not been designated by the Secretary of Transportation as being equivalent to vessels owned or operated by DOD. Consequently, NDRF vessels are not

vessels of the Armed Forces, as defined by the statute, and they are not subject to uniform national discharge standards.

## V. Related Acts of Congress and Executive Orders

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), EPA and DOD 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 Phase I rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. 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 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. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

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 regulatory requirements. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not significantly or uniquely affect small governments because the preemption that occurs after promulgation of this rule applies to both large governments (States) as well as their political subdivisions (which would include small governments). Further, the preemption originates from the CWA rather than this rule. Finally, the no-discharge zone procedures in the rule would apply only to States, not their political subdivisions. Thus, this rule is not subject to the requirements of Section 203 of the UMRA. Nevertheless, as described elsewhere in this preamble and in the record for the rule, DOD and EPA sought meaningful and timely input from States and localities on this rule.

### C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a

description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule applies to vessels of the Armed Forces. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### *D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's 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 13084 requires EPA 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."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As previously discussed, this rule does not impose any mandates on tribal governments. Further, as discussed elsewhere in this preamble and the record to the rule, EPA and DOD do not anticipate any significant or unique effects to communities of Indian tribal

governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA and DOD generally are required to prepare 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 the Administrator of EPA and the Secretary of Defense certify that the rule will not have a significant economic impact on a substantial number of small entities, EPA and DOD are not required to prepare that analysis. The RFA recognizes three kinds of small entities, and defines them as follows: (1) Small governmental jurisdictions: any government of a district with a population of less than 50,000; (2) Small business: any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act; and (3) Small organization: any not for profit enterprise that is independently owned and operated and not dominant in its field. This Phase I rule addresses discharges from vessels of the Armed Forces and imposes information collection requirements on States that wish to establish no-discharge zones or petition the Secretary of Defense and the Administrator to review a determination regarding the need for a marine pollution control device or a standard issued under Phase II of the rule. Small entities are not affected by this rule. Pursuant to section 605(b) of the RFA, the Administrator and the Secretary certify that this Phase I rule will not have a significant economic impact on a substantial number of small entities.

#### *F. 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.*, as an amendment to the collection assigned OMB control number 2040-0187. There were no OMB or public comments on this information collection request.

There are three information collections associated with this rule, each of which is required by statute in

order for a State to obtain a benefit. Each information collection is discussed separately below (including authority and projected annual hour and cost burdens). The total projected annual hour burden for all three information collections is 958 hours; the projected annual cost burden is \$31,871.

In order for a State to establish a No-discharge Zone (NDZ) by State prohibition, EPA must make the following determinations: (i) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (ii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(A), 33 U.S.C. 1322(n)(7)(A)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.9(a). The information requested from the State will be used by EPA to make the determinations it is required to make by law in order for a State prohibition to be effective.

The projected annual hour burden for requests by a State to EPA to make the determinations required for the State to establish a NDZ by State prohibition is 717 hours (with an average of 179.25 burden hours per response and an estimated 4 respondents per year). The projected annual cost burden is \$23,815 (with an average of \$23,215 for labor, \$0 for capital and start-up costs, \$600 for operation and maintenance, and \$0 for the purchase of services).

In order for EPA to establish a NDZ by EPA prohibition (upon application of a State), EPA must make the following determinations: (i) that the protection and enhancement of the quality of the specified waters require a prohibition of the discharge; (ii) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (iii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(B), 33 U.S.C. 1322(n)(7)(B)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.10(a). The information requested from the State will be used by EPA to make the determinations it is

required to make by law in order to establish a NDZ.

The projected annual hour burden for applications by a State to EPA to establish a NDZ by EPA prohibition is 194.25 hours (with an average of 194.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is \$6,478 (with an average of \$6,328 for labor, \$0 for capital and start-up costs, \$150 for operation and maintenance, and \$0 for the purchase of services).

The Governor of any State may request EPA and the Secretary of Defense to review (i) a determination of whether an UNDS discharge requires a control, or (ii) a standard of performance for a control on an UNDS discharge, by submitting a petition which discusses significant new scientific and technical information that could reasonably result in a change to the determination or standard (see CWA section 312(n)(5)(D), 33 U.S.C. 1322(n)(5)(D)). The State must provide EPA this information and a discussion of how the information is relevant to one or more of the seven factors which EPA and the Secretary of Defense are required to consider in making these determinations and standards (see CWA section 312(n)(2)(B), 33 U.S.C. 1322(n)(2)(B)). These requirements are listed in 40 CFR 1700.12. The information requested from the State will be used by EPA and the Secretary of Defense in order to review any determinations and standards promulgated under UNDS.

The projected annual hour burden for petitions from a State to EPA and DOD to review a determination or standard is 46.25 hours (with an average of 46.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is \$1,578 (with an average of \$1,428 for labor, \$0 for capital and start-up costs, \$150 for operation and maintenance, and \$0 for the purchase of services).

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 amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

#### G. 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency 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 considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

#### H. Endangered Species Act

EPA and DOD have discussed the applicability of the Endangered Species Act (ESA) to the three phases of the Uniform National Discharge Standards rulemaking with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. As Phase I is a preliminary step, simply identifying the discharges that will require control and the discharges that will not require control, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have agreed that the consultation requirements of section 7 of the ESA do not apply to this rule. If EPA and DOD determine that Phase II may affect listed species, EPA and DOD will initiate consultation during Phase II of the UNDS rulemaking, which will establish performance standards for the

discharges identified in Phase I as requiring control.

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

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA and DOD are required to use voluntary consensus standards in their 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 or DOD, the Act requires the Agency and Department to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA and DOD find that this rule does not address any technical standards subject to the NTTAA. It simply addresses which discharges would or would not require a MPCD.

#### J. 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. EPA 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 prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 9, 1999.

#### Appendix to the Preamble— Abbreviations, Acronyms, and Other Terms Used in This Document

Administrator—The Administrator of the U.S. Environmental Protection Agency  
CFR—U.S. Code of Federal Regulations  
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*)  
CWA—Clean Water Act  
DOD—U.S. Department of Defense



EPA—U.S. Environmental Protection Agency  
 MPCD—Marine pollution control device  
 NDRF—National Defense Reserve Fleet  
 No-discharge zone—An area of water into which one or more specified discharges is prohibited, as established under procedures set forth in 40 CFR 1700.7 to 1700.10  
 UNDS—Uniform national discharge standards

**List of Subjects**

**40 CFR Part 9**

Environmental protection, Reporting and recordkeeping requirements.

**40 CFR Part 1700**

Environmental protection, Armed Forces, Vessels, Coastal zone, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 27, 1999.

**Carol M. Browner,**

*Administrator, Environmental Protection Agency.*

Dated: April 7, 1999.

**Robert B. Pirie, Jr.,**

*Assistant Secretary of the Navy (Installations and Environment).*

For the reasons set forth in the preamble, EPA amends 40 CFR Chapter I and EPA and DOD establish 40 CFR chapter VII of the Code of Federal Regulations consisting of part 1700 as follows:

**CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY**

**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.

**40 CFR CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE**

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

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

\* \* \* \* \*

40 CFR citation	OMB control No.
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40 CFR citation	OMB control No.
* * * *	* * * *
<b>Uniform National Discharge Standards for Vessels of the Armed Forces</b>	
1700.9–1700.12 .....	2040–0187
* * * *	* * * *

3. Chapter VII consisting of Part 1700 is established to read follows:

**CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE; UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES**

**PART 1700—UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES**

**Subpart A—Scope**

- Sec.
- 1700.1 Applicability.
- 1700.2 Effect.
- 1700.3 Definitions.

**Subpart B—Discharge Determinations**

- 1700.4 Discharges requiring control.
- 1700.5 Discharges not requiring control.

**Subpart C—Effect on States**

- 1700.6 Effect on State and local statutes and regulations.

**No-Discharge Zones**

- 1700.7 No-discharge zones.
- 1700.8 Discharges for which no-discharge zones can be established.
- 1700.9 No-discharge zones by State prohibition.
- 1700.10 No-discharge zones by EPA prohibition.

**State Petition for Review**

- 1700.11 State petition for review of determinations or standards.
- 1700.12 Petition requirements.
- 1700.13 Petition decisions.

**Subpart D—Marine Pollution Control Device (MPCD) Performance Standards**

- 1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [reserved]

**Authority:** 33 U.S.C. 1322, 1361.

**Subpart A—Scope**

**§ 1700.1 Applicability.**

(a) This part applies to the owners and operators of Armed Forces vessels, except where the Secretary of Defense finds that compliance with this part is not in the interest of the national security of the United States. This part does not apply to vessels while they are under construction, vessels in drydock, amphibious vehicles, or vessels under

the jurisdiction of the Department of Transportation other than those of the Coast Guard.

(b) This part also applies to States and political subdivisions of States.

**§ 1700.2 Effect.**

(a) This part identifies those discharges, other than sewage, incidental to the normal operation of Armed Forces vessels that require control within the navigable waters of the United States and the waters of the contiguous zone, and those discharges that do not require control. Discharges requiring control are identified in § 1700.4. Discharges not requiring control are identified in § 1700.5. Federal standards of performance for each required Marine Pollution Control Device are listed in § 1700.14. This part is not applicable beyond the contiguous zone.

(b) This part prohibits States and their political subdivisions from adopting or enforcing State or local statutes or regulations controlling the discharges from Armed Forces vessels listed in §§ 1700.4 and 1700.5 according to the timing provisions in § 1700.6, except to establish a no-discharge zone by State prohibition in accordance with § 1700.9, or to apply for a no-discharge zone by EPA prohibition in accordance with § 1700.10. This part also provides a mechanism for States to petition the Administrator and the Secretary to review a determination of whether a discharge requires control, or to review a Federal standard of performance for a Marine Pollution Control Device, in accordance with §§ 1700.11 through 1700.13.

**§ 1700.3 Definitions.**

*Administrator* means the Administrator of the United States Environmental Protection Agency or that person's authorized representative.

*Armed Forces vessel* means a vessel owned or operated by the United States Department of Defense or the United States Coast Guard, other than vessels that are time or voyage chartered by the Armed Forces, vessels of the U.S. Army Corps of Engineers, or vessels that are memorials or museums.

*Discharge incidental to the normal operation of a vessel* means a discharge, including, but not limited to: graywater, bilgewater, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective,

preservative, or absorptive application to the hull of a vessel; and a discharge in connection with the testing, maintenance, and repair of any of the aforementioned systems whenever the vessel is waterborne, including pierside. A discharge incidental to normal operation does not include:

- (1) Sewage;
- (2) A discharge of rubbish, trash, or garbage;
- (3) A discharge of air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator;
- (4) A discharge that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act; or

(5) A discharge containing source, special nuclear, or byproduct materials regulated by the Atomic Energy Act.

*Environmental Protection Agency*, abbreviated EPA, means the United States Environmental Protection Agency.

*Marine Pollution Control Device*, abbreviated MPCD, means any equipment or management practice installed or used on an Armed Forces vessel that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel, and that is determined by the Administrator and Secretary to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations in Clean Water Act section 312(n)(2)(B).

*No-discharge zone* means an area of specified waters established pursuant to this regulation into which one or more specified discharges incidental to the normal operation of Armed Forces vessels, whether treated or untreated, are prohibited.

*Secretary* means the Secretary of the United States Department of Defense or that person's authorized representative.

*United States* includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

*Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on navigable waters of the United States or waters of the contiguous zone, but does not include amphibious vehicles.

#### Subpart B—Discharge Determinations

##### § 1700.4 Discharges requiring control.

For the following discharges incidental to the normal operation of

Armed Forces vessels, the Administrator and the Secretary have determined that it is reasonable and practicable to require use of a Marine Pollution Control Device for at least one class of vessel to mitigate adverse impacts on the marine environment:

(a) Aqueous Film-Forming Foam: the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.

(b) Catapult Water Brake Tank & Post-Launch Retraction Exhaust: the oily water skimmed from the water tank used to stop the forward motion of an aircraft carrier catapult, and the condensed steam discharged when the catapult is retracted.

(c) Chain Locker Effluent: the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain.

(d) Clean Ballast: the seawater taken into, and discharged from, dedicated ballast tanks to maintain the stability of the vessel and to adjust the buoyancy of submarines.

(e) Compensated Fuel Ballast: the seawater taken into, and discharged from, ballast tanks designed to hold both ballast water and fuel to maintain the stability of the vessel.

(f) Controllable Pitch Propeller Hydraulic Fluid: the hydraulic fluid that discharges into the surrounding seawater from propeller seals as part of normal operation, and the hydraulic fluid released during routine maintenance of the propellers.

(g) Deck Runoff: the precipitation, washdowns, and seawater falling on the weather deck of a vessel and discharged overboard through deck openings.

(h) Dirty Ballast: the seawater taken into, and discharged from, empty fuel tanks to maintain the stability of the vessel.

(i) Distillation and Reverse Osmosis Brine: the concentrated seawater (brine) produced as a byproduct of the processes used to generate freshwater from seawater.

(j) Elevator Pit Effluent: the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels.

(k) Firemain Systems: the seawater pumped through the firemain system for firemain testing, maintenance, and training, and to supply water for the operation of certain vessel systems.

(l) Gas Turbine Water Wash: the water released from washing gas turbine components.

(m) Graywater: galley, bath, and shower water, as well as wastewater from lavatory sinks, laundry, interior deck drains, water fountains, and shop sinks.

(n) Hull Coating Leachate: the constituents that leach, dissolve, ablate, or erode from the paint on the hull into the surrounding seawater.

(o) Motor Gasoline and Compensating Discharge: the seawater taken into, and discharged from, motor gasoline tanks to eliminate free space where vapors could accumulate.

(p) Non-Oily machinery wastewater: the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers.

(q) Photographic Laboratory Drains: the laboratory wastewater resulting from processing of photographic film.

(r) Seawater Cooling Overboard Discharge: the discharge of seawater from a dedicated system that provides noncontact cooling water for other vessel systems.

(s) Seawater Piping Biofouling Prevention: the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels.

(t) Small Boat Engine Wet Exhaust: the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine.

(u) Sonar Dome Discharge: the leaching of antifoulant materials into the surrounding seawater and the release of seawater or freshwater retained within the sonar dome.

(v) Submarine Bilgewater: the wastewater from a variety of sources that accumulates in the lowest part of the submarine (i.e., bilge).

(w) Surface Vessel Bilgewater/Oil-Water Separator Effluent: the wastewater from a variety of sources that accumulates in the lowest part of the vessel (the bilge), and the effluent produced when the wastewater is processed by an oil water separator.

(x) Underwater Ship Husbandry: the materials discharged during the inspection, maintenance, cleaning, and repair of hulls performed while the vessel is waterborne.

(y) Welldeck Discharges: the water that accumulates from seawater flooding of the docking well (welldeck) of a vessel used to transport, load, and unload amphibious vessels, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck.

##### § 1700.5 Discharges not requiring control.

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have

determined that it is not reasonable or practicable to require use of a Marine Pollution Control Device to mitigate adverse impacts on the marine environment:

(a) Boiler Blowdown: the water and steam discharged when a steam boiler is blown down, or when a steam safety valve is tested.

(b) Catapult Wet Accumulator Discharge: the water discharged from a catapult wet accumulator, which stores a steam/water mixture for launching aircraft from an aircraft carrier.

(c) Cathodic Protection: the constituents released into surrounding water from sacrificial anode or impressed current cathodic hull corrosion protection systems.

(d) Freshwater Lay-up: the potable water that is discharged from the seawater cooling system while the vessel is in port, and the cooling system is in lay-up mode (a standby mode where seawater in the system is replaced with potable water for corrosion protection).

(e) Mine Countermeasures Equipment Lubrication: the constituents released into the surrounding seawater by erosion or dissolution from lubricated mine countermeasures equipment when the equipment is deployed and towed.

(f) Portable Damage Control Drain Pump Discharge: the seawater pumped through the portable damage control drain pump and discharged overboard during testing, maintenance, and training activities.

(g) Portable Damage Control Drain Pump Wet Exhaust: the seawater mixed and discharged with portable damage control drain pump exhaust to cool the exhaust and quiet the engine.

(h) Refrigeration and Air Conditioning Condensate: the drainage of condensed moisture from air conditioning units, refrigerators, freezers, and refrigerated spaces.

(i) Rudder Bearing Lubrication: the oil or grease released by the erosion or dissolution from lubricated bearings that support the rudder and allow it to turn freely.

(j) Steam Condensate: the condensed steam discharged from a vessel in port, where the steam originates from port facilities.

(k) Stern Tube Seals and Underwater Bearing Lubrication: the seawater pumped through stern tube seals and underwater bearings to lubricate and cool them during normal operation.

(l) Submarine Acoustic Countermeasures Launcher Discharge: the seawater that is mixed with acoustic countermeasure device propulsion gas following a countermeasure launch that is then exchanged with surrounding

seawater, or partially drained when the launch assembly is removed from the submarine for maintenance.

(m) Submarine Emergency Diesel Engine Wet Exhaust: the seawater that is mixed and discharged with submarine emergency diesel engine exhaust to cool the exhaust and quiet the engine.

(n) Submarine Outboard Equipment Grease and External Hydraulics: the grease released into the surrounding seawater by erosion or dissolution from submarine equipment exposed to seawater.

### Subpart C—Effect on States

#### § 1700.6 Effect on State and local statutes and regulations.

(a) After the effective date of a final rule determining that it is not reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge, except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(b)(1) After the effective date of a final rule determining that it is reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States may apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10) for that discharge.

(2) After the effective date of a final rule promulgated by the Secretary governing the design, construction, installation, and use of a Marine Pollution Control Device for a discharge listed in § 1700.4, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(c) The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for

any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device.

### No-Discharge Zones

#### § 1700.7 No-discharge zones.

For this part, a no-discharge zone is a waterbody, or portion thereof, where one or more discharges incidental to the normal operation of Armed Forces vessels, whether treated or not, are prohibited. A no-discharge zone is established either by State prohibition using the procedures in § 1700.9, or by EPA prohibition, upon application of a State, using the procedures in § 1700.10.

#### § 1700.8 Discharges for which no-discharge zones can be established.

(a) A no-discharge zone may be established by State prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.9. A no-discharge zone established by a State using these procedures may apply only to those discharges that have been preempted from other State or local regulation pursuant to § 1700.6.

(b) A no-discharge zone may be established by EPA prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.10.

#### § 1700.9 No-discharge zones by State prohibition.

(a) A State seeking to establish a no-discharge zone by State prohibition must send to the Administrator the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A determination that the protection and enhancement of the waters described in paragraph (a)(2) of this section require greater environmental protection than provided by existing Federal standards.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying the prohibition to all vessels in the area, the State must demonstrate the technical or environmental basis for applying the prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the two determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of any prohibition on Armed Forces vessels.

(1) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(2) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessels.

(c) EPA will notify the State in writing of the result of the determinations under paragraph (b) of this section, and will provide a written explanation of any negative determinations. A no-discharge zone established by State prohibition will not go into effect until EPA determines that the conditions of paragraph (b) of this section have been met.

#### **§ 1700.10 No-discharge zones by EPA prohibition.**

(a) A State requesting EPA to establish a no-discharge zone must send to the Administrator an application containing the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The

description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A technical analysis showing why protection and enhancement of the waters described in paragraph (a)(2) of this section require a prohibition of the discharge. The analysis must provide specific information on why the discharge adversely impacts the zone and how prohibition will protect the zone. In addition, the analysis should characterize any sensitive areas, such as aquatic sanctuaries, fish-spawning and nursery areas, pristine areas, areas not meeting water quality standards, drinking water intakes, and recreational areas.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying a prohibition to other vessels in the area, the State must demonstrate the technical or environmental basis for applying a prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the three determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of the prohibition on Armed Forces vessels.

(1) The protection and enhancement of the specified waters require a prohibition of the discharge.

(2) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(3) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, or the vessels.

(c) If the three conditions in paragraph (b) of this section are met, EPA will by regulation establish the no-discharge zone. If the conditions in paragraphs (b) (1) and (3) of this section are met, but the condition in paragraph (b)(2) of this section is not met, EPA may establish the no-discharge zone if it determines that the significance of the waters and the potential impact of the discharge are of sufficient magnitude to warrant any resulting constraints on Armed Forces vessels.

(d) EPA will notify the State of its decision on the no-discharge zone application in writing. If EPA approves the no-discharge zone application, EPA will by regulation establish the no-discharge zone by modification to this part. A no-discharge zone established by EPA prohibition will not go into effect until the effective date of the regulation.

#### **State Petition for Review**

##### **§ 1700.11 State petition for review of determinations or standards.**

The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device. A State may submit a petition only where there is new, significant information not considered previously by the Administrator and Secretary.

##### **§ 1700.12 Petition requirements.**

A petition for review of a determination or standard must include:

(a) The discharge from § 1700.4 or § 1700.5 for which a change in determination is requested, or the performance standard from § 1700.14 for which review is requested.

(b) The scientific and technical information on which the petition is based.

(c) A detailed explanation of why the State believes that consideration of the new information should result in a change to the determination or the standard on a nationwide basis, and an

explanation of how the new information is relevant to one or more of the following factors:

- (1) The nature of the discharge.
- (2) The environmental effects of the discharge.
- (3) The practicability of using a Marine Pollution Control Device.
- (4) The effect that installation or use of the Marine Pollution Control Device would have on the operation or operational capability of the vessel.
- (5) Applicable United States law.

(6) Applicable international standards.

(7) The economic costs of the installation and use of the Marine Pollution Control Device.

**§ 1700.13 Petition decisions.**

The Administrator and the Secretary will evaluate the petition and grant or deny the petition no later than two years after the date of receipt of the petition. If the Administrator and Secretary grant the petition, they will undertake rulemaking to amend this part. If the

Administrator and Secretary deny the petition, they will provide the State with a written explanation of why they denied it.

**Subpart D—Marine Pollution Control Device (MPCD) Performance Standards**

**§ 1700.14 Marine Pollution Control Device (MPCD) Performance Standards.**

[Reserved.]

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