

dian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

#### (d) Funding for tribal participation

Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant \$500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

(Pub. L. 111-281, title VII, § 706, Oct. 15, 2010, 124 Stat. 2983.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

#### § 1321c. International efforts on enforcement

The Secretary of the department in which the Coast Guard is operating, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

(Pub. L. 111-281, title VII, § 709, Oct. 15, 2010, 124 Stat. 2986.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

#### § 1322. Marine sanitation devices; discharges incidental to the normal operation of vessels

##### (a) Definitions

In this section, the term—

(1) “new vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) “existing vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) “public vessel” means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) “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;

(5) “marine sanitation device” includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) “sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) “manufacturer” means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices, marine pollution control device equipment, or vessels subject to standards and regulations promulgated under this section;

(8) “person” means an individual, partnership, firm, corporation, association, or agency of the United States, but does not include an individual on board a public vessel;

(9) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) “commercial vessels” means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) “graywater” means galley, bath, and shower water;

(12) “discharge incidental to the normal operation of a vessel”—

(A) means a discharge, including—

(i) graywater, bilge water, 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 the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and

(B) does not include—

(i) a discharge of rubbish, trash, garbage, or other such material discharged overboard;

(ii) an air emission resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on February 10, 1996);

(13) “marine pollution control device” means, except as provided in subsection (p), any equipment or management practice, for installation or use on board a vessel of the Armed Forces, that is—

(A) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

(B) determined by the Administrator and the Secretary of Defense to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth in subsection (n)(2)(B); and

(14) “vessel of the Armed Forces” means—

(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 described in subparagraph (A).

**(b) Federal standards of performance**

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as “standards”) which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and

navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

**(c) Initial standards; effective dates; revision; waiver**

(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 1314(d) of this title. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

**(d) Vessels owned and operated by the United States**

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

**(e) Pre-promulgation consultation**

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health and Human Services; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5.

**(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage**

(1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term "houseboat" means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4)(A) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(B) 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.

**(g) Sales limited to certified devices; certification of test device; recordkeeping; reports**

(1) No manufacturer of a marine sanitation device or marine pollution control device equipment shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device or marine pollution control device equipment manufactured after the effective date of the standards and regulations promulgated under this section unless such device or equipment is in all material respects substantially the same as a test device or equipment certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device or marine pollution control device equipment if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device or equipment in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device or equipment is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device or equipment. Any device or equipment manufactured by such manufacturer which is in all material respects substantially the same as the certified test device or equipment shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the Department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees con-

cerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

**(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices**

**(1) In general**

Subject to paragraph (2), after the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(A) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device and marine pollution control device equipment which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(B) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device or any certified marine pollution control device equipment or element of design of such equipment installed in such vessel;

(C) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(D) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

**(2) Effect of subsection**

Nothing in this subsection requires certification of a marine pollution control device for use on any vessel of the Armed Forces.

**(i) Jurisdiction to restrain violations; contempts**

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

**(j) Penalties**

Any person who violates subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable to a civil penalty of not more than \$5,000 for each violation. Any person who violates clause (4) of subsection (h) of this

section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than \$2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

**(k) Enforcement authority**

**(1) Administrator**

This section shall be enforced by the Administrator, to the extent provided in section 1319 of this title.

**(2) Secretary**

**(A) In general**

This section shall be enforced by the Secretary of the department in which the Coast Guard is operating, who may use, by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

**(B) Inspections**

For purposes of ensuring compliance with this section, the Secretary—

(i) may carry out an inspection (including the taking of ballast water samples) of any vessel at any time; and

(ii) shall—

(I) establish procedures for—

(aa) reporting violations of this section; and

(bb) accumulating evidence regarding those violations; and

(II) use appropriate and practicable measures of detection and environmental monitoring of vessels.

**(C) Detention**

The Secretary may detain a vessel if the Secretary—

(i) has reasonable cause to believe that the vessel—

(I) has failed to comply with an applicable requirement of this section; or

(II) is being operated in violation of such a requirement; and

(ii) the Secretary provides to the owner or operator of the vessel a notice of the intent to detain.

**(3) States**

**(A) In general**

This section may be enforced by a State or political subdivision of a State (including the attorney general of a State), including by filing a civil action in an appropriate Federal district court to enforce any violation of subsection (p).

**(B) Jurisdiction**

The appropriate Federal district court shall have jurisdiction with respect to a civil

action filed pursuant to subparagraph (A), without regard to the amount in controversy or the citizenship of the parties—

- (i) to enforce the requirements of this section; and
- (ii) to apply appropriate civil penalties under this section or section 1319(d) of this title, as appropriate.

**(l) Boarding and inspection of vessels; execution of warrants and other process**

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

**(m) Enforcement in United States possessions**

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

**(n) Uniform national discharge standards for vessels of Armed Forces**

**(1) Applicability**

This subsection shall apply to vessels of the Armed Forces and discharges, other than sewage, incidental to the normal operation of a vessel of the Armed Forces, unless the Secretary of Defense finds that compliance with this subsection would not be in the national security interests of the United States.

**(2) Determination of discharges required to be controlled by marine pollution control devices**

**(A) In general**

The Administrator and the Secretary of Defense, after consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall jointly determine the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require use of a marine pollution control device to mitigate adverse impacts on the marine environment. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the determinations in accordance with such section. The Secretary of Defense shall require the use of a marine pollution control device on board a vessel of the Armed Forces in any case in which it is determined that the use of such a device is reasonable and practicable.

**(B) Considerations**

In making a determination under subparagraph (A), the Administrator and the Sec-

retary of Defense shall take into consideration—

- (i) the nature of the discharge;
- (ii) the environmental effects of the discharge;
- (iii) the practicability of using the marine pollution control device;
- (iv) the effect that installation or use of the marine pollution control device would have on the operation or operational capability of the vessel;
- (v) applicable United States law;
- (vi) applicable international standards; and
- (vii) the economic costs of the installation and use of the marine pollution control device.

**(3) Performance standards for marine pollution control devices**

**(A) In general**

For each discharge for which a marine pollution control device is determined to be required under paragraph (2), the Administrator and the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of State, the Secretary of Commerce, other interested Federal agencies, and interested States, shall jointly promulgate Federal standards of performance for each marine pollution control device required with respect to the discharge. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the standards in accordance with such section.

**(B) Considerations**

In promulgating standards under this paragraph, the Administrator and the Secretary of Defense shall take into consideration the matters set forth in paragraph (2)(B).

**(C) Classes, types, and sizes of vessels**

The standards promulgated under this paragraph may—

- (i) distinguish among classes, types, and sizes of vessels;
- (ii) distinguish between new and existing vessels; and
- (iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

**(4) Regulations for use of marine pollution control devices**

The Secretary of Defense, after consultation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations governing the design, construction, installation, and use of marine pollution control devices on board vessels of the Armed Forces as are necessary to achieve the standards promulgated under paragraph (3).

**(5) Deadlines; effective date**

**(A) Determinations**

The Administrator and the Secretary of Defense shall—

(i) make the initial determinations under paragraph (2) not later than 2 years after February 10, 1996; and

(ii) every 5 years—

(I) review the determinations; and

(II) if necessary, revise the determinations based on significant new information.

**(B) Standards**

The Administrator and the Secretary of Defense shall—

(i) promulgate standards of performance for a marine pollution control device under paragraph (3) not later than 2 years after the date of a determination under paragraph (2) that the marine pollution control device is required; and

(ii) every 5 years—

(I) review the standards; and

(II) if necessary, revise the standards, consistent with paragraph (3)(B) and based on significant new information.

**(C) Regulations**

The Secretary of Defense shall promulgate regulations with respect to a marine pollution control device under paragraph (4) as soon as practicable after the Administrator and the Secretary of Defense promulgate standards with respect to the device under paragraph (3), but not later than 1 year after the Administrator and the Secretary of Defense promulgate the standards. The regulations promulgated by the Secretary of Defense under paragraph (4) shall become effective upon promulgation unless another effective date is specified in the regulations.

**(D) Petition for review**

The Governor of any State may submit a petition requesting that the Secretary of Defense and the Administrator review a determination under paragraph (2) or a standard under paragraph (3), if there is significant new information, not considered previously, that could reasonably result in a change to the particular determination or standard after consideration of the matters set forth in paragraph (2)(B). The petition shall be accompanied by the scientific and technical information on which the petition is based. The Administrator and the Secretary of Defense shall grant or deny the petition not later than 2 years after the date of receipt of the petition.

**(6) Effect on other laws**

**(A) Prohibition on regulation by States or political subdivisions of States**

Beginning on the effective date of—

(i) a determination under paragraph (2) 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 a vessel of the Armed Forces; or

(ii) regulations promulgated by the Secretary of Defense under paragraph (4);

except as provided in paragraph (7), neither a State nor a political subdivision of a State may adopt or enforce any statute or regula-

tion of the State or political subdivision with respect to the discharge or the design, construction, installation, or use of any marine pollution control device required to control discharges from a vessel of the Armed Forces.

**(B) Federal laws**

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel.

**(7) Establishment of State no-discharge zones**

**(A) State prohibition**

**(i) In general**

After the effective date of—

(I) a determination under paragraph (2) 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 a vessel of the Armed Forces; or

(II) regulations promulgated by the Secretary of Defense under paragraph (4);

if a State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters. No prohibition shall apply until the Administrator makes the determinations described in subclauses (II) and (III) of subparagraph (B)(i).

**(ii) Documentation**

To the extent that a prohibition under this paragraph would apply to vessels of the Armed Forces and not to other types of vessels, the State shall document the technical or environmental basis for the distinction.

**(B) Prohibition by the Administrator**

**(i) In general**

Upon application of a State, the Administrator shall by regulation prohibit the discharge from a vessel of 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(I) the protection and enhancement of the quality of the specified waters within the State require a prohibition of the discharge into the waters;

(II) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and

(III) 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.

**(ii) Approval or disapproval**

The Administrator shall approve or disapprove an application submitted under clause (i) not later than 90 days after the date on which the application is submitted to the Administrator. Notwithstanding clause (i)(II), the Administrator shall not disapprove an application for the sole reason that there are not adequate facilities to remove any discharge incidental to the normal operation of a vessel from vessels of the Armed Forces.

**(C) Applicability to foreign flagged vessels**

A prohibition under this paragraph—

(i) shall not impose any design, construction, manning, or equipment standard on a foreign flagged vessel engaged in innocent passage unless the prohibition implements a generally accepted international rule or standard; and

(ii) that relates to the prevention, reduction, and control of pollution shall not apply to a foreign flagged vessel engaged in transit passage unless the prohibition implements an applicable international regulation regarding the discharge of oil, oily waste, or any other noxious substance into the waters.

**(8) Prohibition relating to vessels of the Armed Forces**

After the effective date of the regulations promulgated by the Secretary of Defense under paragraph (4), it shall be unlawful for any vessel of the Armed Forces subject to the regulations to—

(A) operate in the navigable waters of the United States or the waters of the contiguous zone, if the vessel is not equipped with any required marine pollution control device meeting standards established under this subsection; or

(B) discharge overboard any discharge incidental to the normal operation of a vessel in waters with respect to which a prohibition on the discharge has been established under paragraph (7).

**(9) Enforcement**

This subsection shall be enforceable, as provided in subsections (j) and (k), against any agency of the United States responsible for vessels of the Armed Forces notwithstanding any immunity asserted by the agency.

**(o) Management practices for recreational vessels****(1) Applicability**

This subsection applies to any discharge, other than a discharge of sewage, from a recreational vessel that is—

(A) incidental to the normal operation of the vessel; and

(B) exempt from permitting requirements under section 1342(r) of this title.

**(2) Determination of discharges subject to management practices****(A) Determination****(i) In general**

The Administrator, in consultation with the Secretary of the department in which

the Coast Guard is operating, the Secretary of Commerce, and interested States, shall determine the discharges incidental to the normal operation of a recreational vessel for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on the waters of the United States.

**(ii) Promulgation**

The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5.

**(iii) Management practices**

The Administrator shall develop management practices for recreational vessels in any case in which the Administrator determines that the use of those practices is reasonable and practicable.

**(B) Considerations**

In making a determination under subparagraph (A), the Administrator shall consider—

(i) the nature of the discharge;

(ii) the environmental effects of the discharge;

(iii) the practicability of using a management practice;

(iv) the effect that the use of a management practice would have on the operation, operational capability, or safety of the vessel;

(v) applicable Federal and State law;

(vi) applicable international standards; and

(vii) the economic costs of the use of the management practice.

**(C) Timing**

The Administrator shall—

(i) make the initial determinations under subparagraph (A) not later than 1 year after July 29, 2008; and

(ii) every 5 years thereafter—

(I) review the determinations; and

(II) if necessary, revise the determinations based on any new information available to the Administrator.

**(3) Performance standards for management practices****(A) In general**

For each discharge for which a management practice is developed under paragraph (2), the Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, other interested Federal agencies, and interested States, shall promulgate, in accordance with section 553 of title 5, Federal standards of performance for each management practice required with respect to the discharge.

**(B) Considerations**

In promulgating standards under this paragraph, the Administrator shall take into account the considerations described in paragraph (2)(B).

**(C) Classes, types, and sizes of vessels**

The standards promulgated under this paragraph may—

- (i) distinguish among classes, types, and sizes of vessels;
- (ii) distinguish between new and existing vessels; and
- (iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

**(D) Timing**

The Administrator shall—

- (i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph (2) that the management practice is reasonable and practicable; and
- (ii) every 5 years thereafter—
  - (I) review the standards; and
  - (II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

**(4) Regulations for the use of management practices**

**(A) In general**

The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance promulgated under paragraph (3).

**(B) Regulations**

**(i) In general**

The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

**(ii) Effective date**

The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

**(iii) Consideration of time**

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

**(5) Effect of other laws**

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a recreational vessel.

**(6) Prohibition relating to recreational vessels**

After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (4), the owner or operator of a recreational vessel shall neither operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters

of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.

**(p) Uniform national standards for discharges incidental to normal operation of vessels**

**(1) Definitions**

In this subsection:

**(A) Aquatic nuisance species**

The term “aquatic nuisance species” means a nonindigenous species that threatens—

- (i) the diversity or abundance of a native species;
- (ii) the ecological stability of—
  - (I) waters of the United States; or
  - (II) waters of the contiguous zone; or
- (iii) a commercial, agricultural, aquacultural, or recreational activity that is dependent on—
  - (I) waters of the United States; or
  - (II) waters of the contiguous zone.

**(B) Ballast water**

**(i) In general**

The term “ballast water” means any water, suspended matter, and other materials taken onboard a vessel—

- (I) to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or
- (II) during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel.

**(ii) Exclusion**

The term “ballast water” does not include any substance that is added to the water described in clause (i) that is directly related to the operation of a properly functioning ballast water management system.

**(C) Ballast water discharge standard**

The term “ballast water discharge standard” means—

- (i) the numerical ballast water discharge standard established by section 151.1511 or 151.2030 of title 33, Code of Federal Regulations (or successor regulations); or
- (ii) if a standard referred to in clause (i) is superseded by a numerical standard of performance under this subsection, that superseding standard.

**(D) Ballast water exchange**

The term “ballast water exchange” means the replacement of water in a ballast water tank using 1 of the following methods:

- (i) Flow-through exchange, in which ballast water is flushed out by pumping in midocean water at the bottom of the tank if practicable, and continuously overflowing the tank from the top, until 3 full volumes of water have been changed to minimize the number of original organisms remaining in the tank.



(ii) Empty and refill exchange, in which ballast water taken on in ports, estuarine waters, or territorial waters is pumped out until the pump loses suction, after which the ballast tank is refilled with midocean water.

**(E) Ballast water management system**

The term “ballast water management system” means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water—

- (i) to kill, render nonviable, or remove organisms; or
- (ii) to avoid the uptake or discharge of organisms.

**(F) Best available technology economically achievable**

The term “best available technology economically achievable” means—

- (i) best available technology economically achievable (within the meaning of section 1311(b)(2)(A) of this title);
- (ii) best available technology (within the meaning of section 1314(b)(2)(B) of this title); and
- (iii) best available technology, as determined in accordance with section 125.3(d)(3) of title 40, Code of Federal Regulations (or successor regulations).

**(G) Best conventional pollutant control technology**

The term “best conventional pollutant control technology” means—

- (i) best conventional pollutant control technology (within the meaning of section 1311(b)(2)(E) of this title);
- (ii) best conventional pollutant control technology (within the meaning of section 1314(b)(4) of this title); and
- (iii) best conventional pollutant control technology, as determined in accordance with section 125.3(d)(2) of title 40, Code of Federal Regulations (or successor regulations).

**(H) Best management practice**

**(i) In general**

The term “best management practice” means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of—

- (I) the waters of the United States; or
- (II) the waters of the contiguous zone.

**(ii) Inclusions**

The term “best management practice” includes any treatment requirement, operating procedure, or practice to control—

- (I) vessel runoff;
- (II) spillage or leaks;
- (III) sludge or waste disposal; or
- (IV) drainage from raw material storage.

**(I) Best practicable control technology currently available**

The term “best practicable control technology currently available” means—

(i) best practicable control technology currently available (within the meaning of section 1311(b)(1)(A) of this title);

(ii) best practicable control technology currently available (within the meaning of section 1314(b)(1) of this title); and

(iii) best practicable control technology currently available, as determined in accordance with section 125.3(d)(1) of title 40, Code of Federal Regulations (or successor regulations).

**(J) Captain of the Port Zone**

The term “Captain of the Port Zone” means a Captain of the Port Zone established by the Secretary pursuant to sections 92, 93, and 633<sup>1</sup> of title 14.

**(K) Empty ballast tank**

The term “empty ballast tank” means a tank that—

- (i) has previously held ballast water that has been drained to the limit of the functional or operational capabilities of the tank (such as loss of suction);
- (ii) is recorded as empty on a vessel log; and
- (iii) contains unpumpable residual ballast water and sediment.

**(L) Great Lakes Commission**

The term “Great Lakes Commission” means the Great Lakes Commission established by article IV A of the Great Lakes Compact<sup>2</sup> to which Congress granted consent in the Act of July 24, 1968 (Public Law 90-419; 82 Stat. 414).

**(M) Great Lakes State**

The term “Great Lakes State” means any of the States of—

- (i) Illinois;
- (ii) Indiana;
- (iii) Michigan;
- (iv) Minnesota;
- (v) New York;
- (vi) Ohio;
- (vii) Pennsylvania; and
- (viii) Wisconsin.

**(N) Great Lakes System**

The term “Great Lakes System” has the meaning given the term in section 1268(a)(3) of this title.

**(O) Internal waters**

The term “internal waters” has the meaning given the term in section 2.24 of title 33, Code of Federal Regulations (or a successor regulation).

**(P) Marine pollution control device**

The term “marine pollution control device” means any equipment or management practice (or combination of equipment and a management practice), for installation or use onboard a vessel, that is—

- (i) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “Great Lakes Basin Compact”.

(ii) determined by the Administrator and the Secretary to be the most effective equipment or management practice (or combination of equipment and a management practice) to reduce the environmental impacts of the discharge, consistent with the factors for consideration described in paragraphs (4) and (5).

**(Q) Nonindigenous species**

The term “nonindigenous species” means an organism of a species that enters an ecosystem beyond the historic range of the species.

**(R) Organism**

The term “organism” includes—

- (i) an animal, including fish and fish eggs and larvae;
- (ii) a plant;
- (iii) a pathogen;
- (iv) a microbe;
- (v) a virus;
- (vi) a prokaryote (including any archaean or bacterium);
- (vii) a fungus; and
- (viii) a protist.

**(S) Pacific Region**

**(i) In general**

The term “Pacific Region” means any Federal or State water—

- (I) adjacent to the State of Alaska, California, Hawaii, Oregon, or Washington; and
- (II) extending from shore.

**(ii) Inclusion**

The term “Pacific Region” includes the entire exclusive economic zone (as defined in section 2701 of this title) adjacent to each State described in clause (i)(I).

**(T) Port or place of destination**

The term “port or place of destination” means a port or place to which a vessel is bound to anchor or moor.

**(U) Render nonviable**

The term “render nonviable”, with respect to an organism in ballast water, means the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment.

**(V) Saltwater flush**

**(i) In general**

The term “saltwater flush” means—

- (I)(aa) the addition of as much midocean water into each empty ballast tank of a vessel as is safe for the vessel and crew; and
- (bb) the mixing of the flushwater with residual ballast water and sediment through the motion of the vessel; and
- (II) the discharge of that mixed water, such that the resultant residual water remaining in the tank—
  - (aa) has the highest salinity possible; and
  - (bb) is at least 30 parts per thousand.

**(ii) Multiple sequences**

For purposes of clause (i), a saltwater flush may require more than 1 fill-mix-

empty sequence, particularly if only small quantities of water can be safely taken on-board a vessel at 1 time.

**(W) Secretary**

The term “Secretary” means the Secretary of the department in which the Coast Guard is operating.

**(X) Small Vessel General Permit**

The term “Small Vessel General Permit” means the permit that is the subject of the notice of final permit issuance entitled “Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet” (79 Fed. Reg. 53702 (September 10, 2014)).

**(Y) Small vessel or fishing vessel**

The term “small vessel or fishing vessel” means a vessel that is—

- (i) less than 79 feet in length; or
- (ii) a fishing vessel, fish processing vessel, or fish tender vessel (as those terms are defined in section 2101 of title 46), regardless of the length of the vessel.

**(Z) Vessel General Permit**

The term “Vessel General Permit” means the permit that is the subject of the notice of final permit issuance entitled “Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel” (78 Fed. Reg. 21938 (April 12, 2013)).

**(2) Applicability**

**(A) In general**

Except as provided in subparagraph (B), this subsection applies to—

- (i) any discharge incidental to the normal operation of a vessel; and
- (ii) any discharge incidental to the normal operation of a vessel (such as most graywater) that is commingled with sewage, subject to the conditions that—
  - (I) nothing in this subsection prevents a State from regulating sewage discharges; and
  - (II) any such commingled discharge shall comply with all applicable requirements of—
    - (aa) this subsection; and
    - (bb) any law applicable to discharges of sewage.

**(B) Exclusion**

This subsection does not apply to any discharge incidental to the normal operation of a vessel—

- (i) from—
  - (I) a vessel of the Armed Forces subject to subsection (n);
  - (II) a recreational vessel subject to subsection (o);
  - (III) a small vessel or fishing vessel, except that this subsection shall apply to any discharge of ballast water from a small vessel or fishing vessel; or
  - (IV) a floating craft that is permanently moored to a pier, including a

“floating” casino, hotel, restaurant, or bar;

(ii) of ballast water from a vessel—

(I) that continuously takes on and discharges ballast water in a flow-through system, if the Administrator determines that system cannot materially contribute to the spread or introduction of an aquatic nuisance species into waters of the United States;

(II) in the National Defense Reserve Fleet that is scheduled for disposal, if the vessel does not have an operable ballast water management system;

(III) that discharges ballast water consisting solely of water taken onboard from a public or commercial source that, at the time the water is taken onboard, meets the applicable requirements or permit requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(IV) that carries all permanent ballast water in sealed tanks that are not subject to discharge; or

(V) that only discharges ballast water into a reception facility; or

(iii) that results from, or contains material derived from, an activity other than the normal operation of the vessel, such as material resulting from an industrial or manufacturing process onboard the vessel.

**(3) Continuation in effect of existing requirements**

**(A) Vessel general permit**

Notwithstanding the expiration date of the Vessel General Permit or any other provision of law, all provisions of the Vessel General Permit shall remain in force and effect, and shall not be modified, until the applicable date described in subparagraph (C).

**(B) Nonindigenous Aquatic Nuisance Prevention and Control Act regulations**

Notwithstanding section 903(a)(2)(A) of the Vessel Incidental Discharge Act of 2018, all regulations promulgated by the Secretary pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before December 4, 2018), including the regulations contained in subparts C and D of part 151 of title 33, Code of Federal Regulations, and subpart 162.060 of part 162 of title 46, Code of Federal Regulations (as in effect on the day before December 4, 2018), shall remain in force and effect until the applicable date described in subparagraph (C).

**(C) Repeal on existence of final, effective, and enforceable requirements**

Effective beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, the requirements of the Vessel General Permit and the regulations described in subparagraph (B) shall have no force or effect.

**(4) National standards of performance for marine pollution control devices and water quality orders**

**(A) Establishment**

**(i) In general**

Not later than 2 years after December 4, 2018, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with interested Governors (subject to clause (iii)), shall promulgate Federal standards of performance for marine pollution control devices for each type of discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection.

**(ii) Concurrence with Secretary**

**(I) Request**

The Administrator shall submit to the Secretary a request for written concurrence with respect to a proposed standard of performance under clause (i).

**(II) Effect of failure to concur**

A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from promulgating the relevant standard of performance in accordance with the deadline under clause (i), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

(aa) documentation of the request submitted under subclause (I); and

(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the 60-day period beginning on the date of submission of the request.

**(iii) Consultation with Governors**

**(I) In general**

The Administrator, in promulgating a standard of performance under clause (i), shall develop the standard of performance—

(aa) in consultation with interested Governors; and

(bb) in accordance with the deadlines under that clause.

**(II) Process**

The Administrator shall develop a process for soliciting input from interested Governors, including information sharing relevant to such process, to allow interested Governors to inform the development of standards of performance under clause (i).

**(III) Objection by governors**

**(aa) Submission**

An interested Governor that objects to a proposed standard of performance under clause (i) may submit to the Administrator in writing a detailed objec-

tion to the proposed standard of performance, describing the scientific, technical, or operational factors that form the basis of the objection.

**(bb) Response**

Before finalizing a standard of performance under clause (i) that is subject to an objection under item (aa) from 1 or more interested Governors, the Administrator shall provide a written response to each interested Governor that submitted an objection under that item that details the scientific, technical, or operational factors that form the basis for that standard of performance.

**(cc) Judicial review**

A response of the Administrator under item (bb) shall not be subject to judicial review.

**(iv) Procedure**

The Administrator shall promulgate the standards of performance under this subparagraph in accordance with—

- (I) this paragraph; and
- (II) section 553 of title 5.

**(B) Stringency**

**(i) In general**

Subject to clause (iii), the standards of performance promulgated under this paragraph shall require—

(I) with respect to conventional pollutants, toxic pollutants, and nonconventional pollutants (including aquatic nuisance species), the application of the best practicable control technology currently available;

(II) with respect to conventional pollutants, the application of the best conventional pollutant control technology; and

(III) with respect to toxic pollutants and nonconventional pollutants (including aquatic nuisance species), the application of the best available technology economically achievable for categories and classes of vessels, which shall result in reasonable progress toward the national goal of eliminating discharges of all pollutants.

**(ii) Best management practices**

The Administrator shall require the use of best management practices to control or abate any discharge incidental to the normal operation of a vessel if—

(I) numeric standards of performance are infeasible under clause (i); or

(II) the best management practices are reasonably necessary—

(aa) to achieve the standards of performance; or

(bb) to carry out the purpose and intent of this subsection.

**(iii) Minimum requirements**

Subject to subparagraph (D)(ii)(II), the combination of any equipment or best management practice comprising a marine

pollution control device shall not be less stringent than the following provisions of the Vessel General Permit:

(I) All requirements contained in parts 2.1 and 2.2 (relating to effluent limits and related requirements), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

(II) All requirements contained in part 5 (relating to vessel class-specific requirements) that concern effluent limits and authorized discharges (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

**(C) Classes, types, and sizes of vessels**

The standards promulgated under this paragraph may distinguish—

(i) among classes, types, and sizes of vessels; and

(ii) between new vessels and existing vessels.

**(D) Review and revision**

**(i) In general**

Not less frequently than once every 5 years, the Administrator, in consultation with the Secretary, shall—

(I) review the standards of performance in effect under this paragraph; and

(II) if appropriate, revise those standards of performance—

(aa) in accordance with subparagraphs (A) through (C); and

(bb) as necessary to establish requirements for any discharge that is subject to regulation under this subsection.

**(ii) Maintaining protectiveness**

**(I) In general**

Except as provided in subclause (II), the Administrator shall not revise a standard of performance under this subsection to be less stringent than an applicable existing requirement.

**(II) Exceptions**

The Administrator may revise a standard of performance to be less stringent than an applicable existing requirement—

(aa) if information becomes available that—

(AA) was not reasonably available when the Administrator promulgated the initial standard of performance or comparable requirement of the Vessel General Permit, as applicable (including the subsequent scarcity or unavailability of materials used to control the relevant discharge); and

(BB) would have justified the application of a less-stringent standard of performance at the time of promulgation; or

(bb) if the Administrator determines that a material technical mistake or

misinterpretation of law occurred when promulgating the existing standard of performance or comparable requirement of the Vessel General Permit, as applicable.

**(E) Best management practices for aquatic nuisance species emergencies and further protection of water quality**

**(i) In general**

Notwithstanding any other provision of this subsection, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with States, may require, by order, the use of an emergency best management practice for any region or category of vessels in any case in which the Administrator determines that such a best management practice—

(I) is necessary to reduce the reasonably foreseeable risk of introduction or establishment of an aquatic nuisance species; or

(II) will mitigate the adverse effects of a discharge that contributes to a violation of a water quality requirement under section 1313 of this title, other than a requirement based on the presence of an aquatic nuisance species.

**(ii) Concurrence with Secretary**

**(I) Request**

The Administrator shall submit to the Secretary a request for written concurrence with respect to an order under clause (i).

**(II) Effect of failure to concur**

A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from issuing the relevant order, subject to the condition that the Administrator shall include in the administrative record of the issuance—

(aa) documentation of the request submitted under subclause (I); and

(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed order during the 60-day period beginning on the date of submission of the request.

**(iii) Duration**

An order issued by the Administrator under clause (i) shall expire not later than the date that is 4 years after the date of issuance.

**(iv) Extensions**

The Administrator may reissue an order under clause (i) for such subsequent periods of not longer than 4 years as the Administrator determines to be appropriate.

**(5) Implementation, compliance, and enforcement requirements**

**(A) Establishment**

**(i) In general**

As soon as practicable, but not later than 2 years, after the date on which the Administrator promulgates any new or revised standard of performance under paragraph (4) with respect to a discharge, the Secretary, in consultation with States, shall promulgate the regulations required under this paragraph with respect to that discharge.

**(ii) Minimum requirements**

Subject to subparagraph (C)(ii)(II), the regulations promulgated under this paragraph shall not be less stringent with respect to ensuring, monitoring, and enforcing compliance than—

(I) the requirements contained in part 3 of the Vessel General Permit (relating to corrective actions);

(II) the requirements contained in part 4 of the Vessel General Permit (relating to inspections, monitoring, reporting, and recordkeeping), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes;

(III) the requirements contained in part 5 of the Vessel General Permit (relating to vessel class-specific requirements) regarding monitoring, inspection, and educational and training requirements (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes; and

(IV) any comparable, existing requirements promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) (including section 1101 of that Act (16 U.S.C. 4711) (as in effect on the day before December 4, 2018)) applicable to that discharge.

**(iii) Coordination with States**

The Secretary, in coordination with the Governors of the States, shall develop, publish, and periodically update inspection, monitoring, data management, and enforcement procedures for the enforcement by States of Federal standards and requirements under this subsection.

**(iv) Effective date**

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall take into consideration the period of time necessary—

(I) to communicate to affected persons the applicability of the regulation; and

(II) for affected persons reasonably to comply with the regulation.

**(v) Procedure**

The Secretary shall promulgate the regulations under this subparagraph in accordance with—

- (I) this paragraph; and
- (II) section 553 of title 5.

**(B) Implementation regulations for marine pollution control devices**

The Secretary shall promulgate such regulations governing the design, construction, testing, approval, installation, and use of marine pollution control devices as are necessary to ensure compliance with the standards of performance promulgated under paragraph (4).

**(C) Compliance assurance**

**(i) In general**

The Secretary shall promulgate requirements (including requirements for vessel owners and operators with respect to inspections, monitoring, reporting, sampling, and recordkeeping) to ensure, monitor, and enforce compliance with—

- (I) the standards of performance promulgated by the Administrator under paragraph (4); and
- (II) the implementation regulations promulgated by the Secretary under subparagraph (B).

**(ii) Maintaining protectiveness**

**(I) In general**

Except as provided in subclause (II), the Secretary shall not revise a requirement under this subparagraph or subparagraph (B) to be less stringent with respect to ensuring, monitoring, or enforcing compliance than an applicable existing requirement.

**(II) Exceptions**

The Secretary may revise a requirement under this subparagraph or subparagraph (B) to be less stringent than an applicable existing requirement—

- (aa) in accordance with this subparagraph or subparagraph (B), as applicable;
- (bb) if information becomes available that—
  - (AA) the Administrator determines was not reasonably available when the Administrator promulgated the existing requirement of the Vessel General Permit, or that the Secretary determines was not reasonably available when the Secretary promulgated the existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or the applicable existing requirement under this subparagraph, as applicable (including subsequent scarcity or unavailability of materials used to control the relevant discharge); and
  - (BB) would have justified the application of a less-stringent requirement at the time of promulgation; or
  - (cc) if the Administrator determines that a material technical mistake or misinterpretation of law occurred

when promulgating an existing requirement of the Vessel General Permit, or if the Secretary determines that a material mistake or misinterpretation of law occurred when promulgating an existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or this subsection.

**(D) Data availability**

Beginning not later than 1 year after December 4, 2018, the Secretary shall provide to the Governor of a State, on request by the Governor, access to Automated Identification System arrival data for inbound vessels to specific ports or places of destination in the State.

**(6) Additional provisions regarding ballast water**

**(A) In general**

In addition to the other applicable requirements of this subsection, the requirements of this paragraph shall apply with respect to any discharge incidental to the normal operation of a vessel that is a discharge of ballast water.

**(B) Empty ballast tanks**

**(i) Requirements**

Except as provided in clause (ii), the owner or operator of a vessel with empty ballast tanks bound for a port or place of destination subject to the jurisdiction of the United States shall, prior to arriving at that port or place of destination, conduct a ballast water exchange or saltwater flush—

- (I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or
- (II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

**(ii) Exceptions**

Clause (i) shall not apply—

- (I) if the unpumpable residual waters and sediments of an empty ballast tank were subject to treatment, in compliance with applicable requirements, through a type-approved ballast water management system approved by the Secretary;
- (II) except as otherwise required under this subsection, if the unpumpable residual waters and sediments of an empty ballast tank were sourced within—
  - (aa) the same port or place of destination; or
  - (bb) contiguous portions of a single Captain of the Port Zone;
- (III) if complying with an applicable requirement of clause (i)—
  - (aa) would compromise the safety of the vessel; or
  - (bb) is otherwise prohibited by any Federal, Canadian, or international

law (including regulations) pertaining to vessel safety;

(IV) if design limitations of the vessel prevent a ballast water exchange or salt-water flush from being conducted in accordance with clause (i); or

(V) if the vessel is operating exclusively within the internal waters of the United States or Canada.

**(C) Period of use of installed ballast water management systems**

**(i) In general**

Except as provided in clause (ii), a vessel shall be deemed to be in compliance with a standard of performance for a marine pollution control device that is a ballast water management system if the ballast water management system—

(I) is maintained in proper working condition, as determined by the Secretary;

(II) is maintained and used in accordance with manufacturer specifications;

(III) continues to meet the ballast water discharge standard applicable to the vessel at the time of installation, as determined by the Secretary; and

(IV) has in effect a valid type-approval certificate issued by the Secretary.

**(ii) Limitation**

Clause (i) shall cease to apply with respect to any vessel on, as applicable—

(I) the expiration of the service life, as determined by the Secretary, of—

(aa) the ballast water management system; or

(bb) the vessel;

(II) the completion of a major conversion (as defined in section 2101 of title 46) of the vessel; or

(III) a determination by the Secretary that there are other type-approved systems for the vessel or category of vessels, with respect to the use of which the environmental, health, and economic benefits would exceed the costs.

**(D) Review of ballast water management system type-approval testing methods**

**(i) Definition of live; living**

Notwithstanding any other provision of law (including regulations), for purposes of section 151.1511 of title 33, and part 162 of title 46, Code of Federal Regulations (or successor regulations), the terms “live” and “living” shall not—

(I) include an organism that has been rendered nonviable; or

(II) preclude the consideration of any method of measuring the concentration of organisms in ballast water that are capable of reproduction.

**(ii) Draft policy**

Not later than 180 days after December 4, 2018, the Secretary, in coordination with the Administrator, shall publish a draft policy letter, based on the best available science, describing type-approval testing

methods and protocols for ballast water management systems, if any, that—

(I) render nonviable organisms in ballast water; and

(II) may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations)—

(aa) to measure the concentration of organisms in ballast water that are capable of reproduction;

(bb) to certify the performance of each ballast water management system under this subsection; and

(cc) to certify laboratories to evaluate applicable treatment technologies.

**(iii) Public comment**

The Secretary shall provide a period of not more than 60 days for public comment regarding the draft policy letter published under clause (ii).

**(iv) Final policy**

**(I) In general**

Not later than 1 year after December 4, 2018, the Secretary, in coordination with the Administrator, shall publish a final policy letter describing type-approval testing methods, if any, for ballast water management systems that render nonviable organisms in ballast water.

**(II) Method of evaluation**

The ballast water management systems under subclause (I) shall be evaluated by measuring the concentration of organisms in ballast water that are capable of reproduction based on the best available science that may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations).

**(III) Revisions**

The Secretary shall revise the final policy letter under subclause (I) in any case in which the Secretary, in coordination with the Administrator, determines that additional testing methods are capable of measuring the concentration of organisms in ballast water that have not been rendered nonviable.

**(v) Factors for consideration**

In developing a policy letter under this subparagraph, the Secretary, in coordination with the Administrator—

(I) shall take into consideration a testing method that uses organism grow-out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction; and

(II) shall not take into consideration a testing method that relies on a staining method that measures the concentration of—

(aa) organisms greater than or equal to 10 micrometers; and

(bb) organisms less than or equal to 50 micrometers.

**(E) Intergovernmental response framework****(i) In general**

The Secretary, in consultation with the Administrator and acting in coordination with, or through, the Aquatic Nuisance Species Task Force established by section 1201(a) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4721(a)), shall establish a framework for Federal and intergovernmental response to aquatic nuisance species risks from discharges from vessels subject to ballast water and incidental discharge compliance requirements under this subsection, including the introduction, spread, and establishment of aquatic nuisance species populations.

**(ii) Ballast discharge risk response**

The Administrator, in coordination with the Secretary and taking into consideration information from the National Ballast Information Clearinghouse developed under section 1102(f) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)), shall establish a risk assessment and response framework using ballast water discharge data and aquatic nuisance species monitoring data for the purposes of—

- (I) identifying and tracking populations of aquatic invasive species;
- (II) evaluating the risk of any aquatic nuisance species population tracked under subclause (I) establishing and spreading in waters of the United States or waters of the contiguous zone; and
- (III) establishing emergency best management practices that may be deployed rapidly, in a local or regional manner, to respond to emerging aquatic nuisance species threats.

**(7) Petitions by Governors for review****(A) In general**

The Governor of a State (or a designee) may submit to the Administrator or the Secretary a petition—

- (i) to issue an order under paragraph (4)(E); or
- (ii) to review any standard of performance, regulation, or policy promulgated under paragraph (4), (5), or (6), respectively, if there exists new information that could reasonably result in a change to—
  - (I) the standard of performance, regulation, or policy; or
  - (II) a determination on which the standard of performance, regulation, or policy was based.

**(B) Inclusion**

A petition under subparagraph (A) shall include a description of any applicable scientific or technical information that forms the basis of the petition.

**(C) Determination****(i) Timing**

The Administrator or the Secretary, as applicable, shall grant or deny—

(I) a petition under subparagraph (A)(i) by not later than the date that is 180 days after the date on which the petition is submitted; and

(II) a petition under subparagraph (A)(ii) by not later than the date that is 1 year after the date on which the petition is submitted.

**(ii) Effect of grant**

If the Administrator or the Secretary determines under clause (i) to grant a petition—

(I) in the case of a petition under subparagraph (A)(i), the Administrator shall immediately issue the relevant order under paragraph (4)(E); or

(II) in the case of a petition under subparagraph (A)(ii), the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a notice of proposed rulemaking to revise the relevant standard, requirement, regulation, or policy under paragraph (4), (5), or (6), as applicable.

**(iii) Notice of denial**

If the Administrator or the Secretary determines under clause (i) to deny a petition, the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a detailed explanation of the scientific, technical, or operational factors that form the basis of the determination.

**(iv) Review**

A determination by the Administrator or the Secretary under clause (i) to deny a petition shall be—

- (I) considered to be a final agency action; and
- (II) subject to judicial review in accordance with section 1369 of this title, subject to clause (v).

**(v) Exceptions****(I) Venue**

Notwithstanding section 1369(b) of this title, a petition for review of a determination by the Administrator or the Secretary under clause (i) to deny a petition submitted by the Governor of a State under subparagraph (A) may be filed in any United States district court of competent jurisdiction.

**(II) Deadline for filing**

Notwithstanding section 1369(b) of this title, a petition for review of a determination by the Administrator or the Secretary under clause (i) shall be filed by not later than 180 days after the date on which the justification for the determination is published in the Federal Register under clause (iii).

**(8) Prohibition****(A) In general**

It shall be unlawful for any person to violate—



(i) a provision of the Vessel General Permit in force and effect under paragraph (3)(A);

(ii) a regulation promulgated pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before December 4, 2018) in force and effect under paragraph (3)(B); or

(iii) an applicable requirement or regulation under this subsection.

**(B) Compliance with regulations**

Effective beginning on the effective date of a regulation promulgated under paragraph (4), (5), (6), or (10), as applicable, it shall be unlawful for the owner or operator of a vessel subject to the regulation—

(i) to discharge any discharge incidental to the normal operation of the vessel into waters of the United States or waters of the contiguous zone, except in compliance with the regulation; or

(ii) to operate in waters of the United States or waters of the contiguous zone, if the vessel is not equipped with a required marine pollution control device that complies with the requirements established under this subsection, unless—

(I) the owner or operator of the vessel denotes in an entry in the official logbook of the vessel that the equipment was not operational; and

(II) either—

(aa) the applicable discharge was avoided; or

(bb) an alternate compliance option approved by the Secretary as meeting the applicable standard was employed.

**(C) Affirmative defense**

No person shall be found to be in violation of this paragraph if—

(i) the violation was in the interest of ensuring the safety of life at sea, as determined by the Secretary; and

(ii) the applicable emergency circumstance was not the result of negligence or malfeasance on the part of—

(I) the owner or operator of the vessel;

(II) the master of the vessel; or

(III) the person in charge of the vessel.

**(D) Treatment**

Each day of continuing violation of an applicable requirement of this subsection shall constitute a separate offense.

**(E) In rem liability**

A vessel operated in violation of this subsection is liable in rem for any civil penalty assessed for the violation.

**(F) Revocation of clearance**

The Secretary shall withhold or revoke the clearance of a vessel required under section 60105 of title 46 if the owner or operator of the vessel is in violation of this subsection.

**(9) Effect on other laws**

**(A) State authority**

**(i) In general**

Except as provided in clauses (ii) through (v) and paragraph (10), effective

beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, no State, political subdivision of a State, or interstate agency may adopt or enforce any law, regulation, or other requirement of the State, political subdivision, or interstate agency with respect to any such discharge.

**(ii) Identical or lesser State laws**

Clause (i) shall not apply to any law, regulation, or other requirement of a State, political subdivision of a State, or interstate agency in effect on or after December 4, 2018—

(I) that is identical to a Federal requirement under this subsection applicable to the relevant discharge; or

(II) compliance with which would be achieved concurrently in achieving compliance with a Federal requirement under this subsection applicable to the relevant discharge.

**(iii) State enforcement of Federal requirements**

A State may enforce any standard of performance or other Federal requirement of this subsection in accordance with subsection (k) or other applicable Federal authority.

**(iv) Exception for certain fees**

**(I) In general**

Subject to subclauses (II) and (III), a State that assesses any fee pursuant to any State or Federal law relating to the regulation of a discharge incidental to the normal operation of a vessel before December 4, 2018, may assess or retain a fee to cover the costs of administration, inspection, monitoring, and enforcement activities by the State to achieve compliance with the applicable requirements of this subsection.

**(II) Maximum amount**

**(aa) In general**

Except as provided in item (bb), a State may assess a fee for activities under this clause equal to not more than \$1,000 against the owner or operator of a vessel that—

(AA) has operated outside of that State; and

(BB) arrives at a port or place of destination in the State (excluding movement entirely within a single port or place of destination).

**(bb) Vessels engaged in coastwise trade**

A State may assess against the owner or operator of a vessel registered in accordance with applicable Federal law and lawfully engaged in the coastwise trade not more than \$5,000 in fees under this clause per vessel during a calendar year.

**(III) Adjustment for inflation****(aa) In general**

A State may adjust the amount of a fee authorized under this clause not more frequently than once every 5 years to reflect the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October immediately preceding the date of adjustment exceeds the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October that immediately precedes the date that is 5 years before the date of adjustment.

**(bb) Effect of subclause**

Nothing in this subclause prevents a State from adjusting a fee in effect before December 4, 2018, to the applicable maximum amount under subclause (II).

**(cc) Applicability**

This subclause applies only to increases in fees to amounts greater than the applicable maximum amount under subclause (II).

**(v) Alaska graywater**

Clause (i) shall not apply with respect to any discharge of graywater (as defined in section 1414 of the Consolidated Appropriations Act, 2001 (Public Law 106-554; 114 Stat. 2763A-323)) from a passenger vessel (as defined in section 2101 of title 46) in the State of Alaska (including all waters in the Alexander Archipelago) carrying 50 or more passengers.

**(vi) Preservation of authority**

Nothing in this subsection preempts any State law, public initiative, referendum, regulation, requirement, or other State action, except as expressly provided in this subsection.

**(B) Established regimes**

Except as expressly provided in this subsection, nothing in this subsection affects the applicability to a vessel of any other provision of Federal law, including—

- (i) this section;
- (ii) section 1321 of this title;
- (iii) the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.); and
- (iv) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.).

**(C) Permitting**

Effective beginning on December 4, 2018—

- (i) the Small Vessel General Permit is repealed; and
- (ii) the Administrator, or a State in the case of a permit program approved under section 1342 of this title, shall not require, or in any way modify, a permit under that section for—

- (I) any discharge that is subject to regulation under this subsection;
- (II) any discharge incidental to the normal operation of a vessel from a

small vessel or fishing vessel, regardless of whether that discharge is subject to regulation under this subsection; or

(III) any discharge described in paragraph (2)(B)(ii).

**(D) No effect on civil or criminal actions**

Nothing in this subsection, or any standard, regulation, or requirement established under this subsection, modifies or otherwise affects, preempts, or displaces—

- (i) any cause of action; or
- (ii) any provision of Federal or State law establishing a remedy for civil relief or criminal penalty.

**(E) No effect on certain secretarial authority**

Nothing in this subsection affects the authority of the Secretary of Commerce or the Secretary of the Interior to administer any land or waters under the administrative control of the Secretary of Commerce or the Secretary of the Interior, respectively.

**(F) No limitation on State inspection authority**

Nothing in this subsection limits the authority of a State to inspect a vessel pursuant to paragraph (5)(A)(iii) in order to monitor compliance with an applicable requirement of this section.

**(10) Additional regional requirements****(A) Minimum Great Lakes System requirements****(i) In general**

Except as provided in clause (ii), the owner or operator of a vessel entering the St. Lawrence Seaway through the mouth of the St. Lawrence River shall conduct a complete ballast water exchange or salt-water flush—

- (I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or
- (II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

**(ii) Exceptions**

Clause (i) shall not apply to a vessel if—

(I) complying with an applicable requirement of clause (i)—

- (aa) would compromise the safety of the vessel; or
- (bb) is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety;

(II) design limitations of the vessel prevent a ballast water exchange from being conducted in accordance with an applicable requirement of clause (i);

(III) the vessel—

- (aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or
- (bb) retains all ballast water while in waters subject to the requirement; or

(IV) empty ballast tanks on the vessel are sealed and certified by the Secretary in a manner that ensures that—

- (aa) no discharge or uptake occurs; and
- (bb) any subsequent discharge of ballast water is subject to the requirement.

**(B) Enhanced Great Lakes System requirements**

**(i) Petitions by Governors for proposed enhanced standards and requirements**

**(I) In general**

The Governor of a Great Lakes State (or a State employee designee) may submit a petition in accordance with subclause (II) to propose that other Governors of Great Lakes States endorse an enhanced standard of performance or other requirement with respect to any discharge that—

- (aa) is subject to regulation under this subsection; and
- (bb) occurs within the Great Lakes System.

**(II) Submission**

A Governor shall submit a petition under subclause (I), in writing, to—

- (aa) the Executive Director of the Great Lakes Commission, in such manner as may be prescribed by the Great Lakes Commission;
- (bb) the Governor of each other Great Lakes State; and
- (cc) the Director of the Great Lakes National Program Office established by section 1268(b) of this title.

**(III) Preliminary assessment by Great Lakes Commission**

**(aa) In general**

After the date of receipt of a petition under subclause (II)(aa), the Great Lakes Commission (acting through the Great Lakes Panel on Aquatic Nuisance Species, to the maximum extent practicable) may develop a preliminary assessment regarding each enhanced standard of performance or other requirement described in the petition.

**(bb) Provisions**

The preliminary assessment developed by the Great Lakes Commission under item (aa)—

- (AA) may be developed in consultation with relevant experts and stakeholders;
- (BB) may be narrative in nature;
- (CC) may include the preliminary views, if any, of the Great Lakes Commission on the propriety of the proposed enhanced standard of performance or other requirement;
- (DD) shall be submitted, in writing, to the Governor of each Great Lakes State and the Director of the Great Lakes National Program Office and published on the internet website of

the Great Lakes National Program Office; and

(EE) except as provided in clause (iii), shall not be taken into consideration, or provide a basis for review, by the Administrator or the Secretary for purposes of that clause.

**(ii) Proposed enhanced standards and requirements**

**(I) Publication in Federal Register**

**(aa) Request by Governor**

Not earlier than the date that is 90 days after the date on which the Executive Director of the Great Lakes Commission receives from a Governor of a Great Lakes State a petition under clause (i)(II)(aa), the Governor may request the Director of the Great Lakes National Program Office to publish, for a period requested by the Governor of not less than 30 days, and the Director shall so publish, in the Federal Register for public comment—

- (AA) a copy of the petition; and
- (BB) if applicable as of the date of publication, any preliminary assessment of the Great Lakes Commission developed under clause (i)(III) relating to the petition.

**(bb) Review of public comments**

On receipt of a written request of a Governor of a Great Lakes State, the Director of the Great Lakes National Program Office shall make available all public comments received in response to the notice under item (aa).

**(cc) No response required**

Notwithstanding any other provision of law, a Governor of a Great Lakes State or the Director of the Great Lakes National Program Office shall not be required to provide a response to any comment received in response to the publication of a petition or preliminary assessment under item (aa).

**(dd) Purpose**

Any public comments received in response to the publication of a petition or preliminary assessment under item (aa) shall be used solely for the purpose of providing information and feedback to the Governor of each Great Lakes State regarding the decision to endorse the proposed standard or requirement.

**(ee) Effect of petition**

A proposed standard or requirement developed under subclause (II) may differ from the proposed standard or requirement described in a petition published under item (aa).

**(II) Coordination to develop proposed standard or requirement**

After the expiration of the public comment period for the petition under subclause (I), any interested Governor of a Great Lakes State may work in coordi-

nation with the Great Lakes Commission to develop a proposed standard of performance or other requirement applicable to a discharge referred to in the petition.

### **(III) Requirements**

A proposed standard of performance or other requirement under subclause (II)—

(aa) shall be developed—

(AA) in consultation with representatives from the Federal and provincial governments of Canada;

(BB) after notice and opportunity for public comment on the petition published under subclause (I); and

(CC) taking into consideration the preliminary assessment, if any, of the Great Lakes Commission under clause (i)(III);

(bb) shall be specifically endorsed in writing by—

(AA) the Governor of each Great Lakes State, if the proposed standard or requirement would impose any additional equipment requirement on a vessel; or

(BB) not fewer than 5 Governors of Great Lakes States, if the proposed standard or requirement would not impose any additional equipment requirement on a vessel; and

(cc) in the case of a proposed requirement to prohibit 1 or more types of discharge regulated under this subsection, whether treated or not treated, into waters within the Great Lakes System, shall not apply outside the waters of the Great Lakes States of the Governors endorsing the proposed requirement under item (bb).

### **(iii) Promulgation by Administrator and Secretary**

#### **(I) Submission**

##### **(aa) In general**

The Governors endorsing a proposed standard or requirement under clause (ii)(III)(bb) may jointly submit to the Administrator and the Secretary for approval each proposed standard of performance or other requirement developed and endorsed pursuant to clause (ii).

##### **(bb) Inclusion**

Each submission under item (aa) shall include an explanation regarding why the applicable standard of performance or other requirement is—

(AA) at least as stringent as a comparable standard of performance or other requirement under this subsection;

(BB) in accordance with maritime safety; and

(CC) in accordance with applicable maritime and navigation laws and regulations.

#### **(cc) Withdrawal**

##### **(AA) In general**

The Governor of any Great Lakes State that endorses a proposed standard or requirement under clause (ii)(III)(bb) may withdraw the endorsement by not later than the date that is 90 days after the date on which the Administrator and the Secretary receive the proposed standard or requirement.

##### **(BB) Effect on Federal review**

If, after the withdrawal of an endorsement under subitem (AA), the proposed standard or requirement does not have the applicable number of endorsements under clause (ii)(III)(bb), the Administrator and the Secretary shall terminate the review under this clause.

#### **(dd) Dissenting opinions**

The Governor of a Great Lakes State that does not endorse a proposed standard or requirement under clause (ii)(III)(bb) may submit to the Administrator and the Secretary any dissenting opinions of the Governor.

#### **(II) Joint notice**

On receipt of a proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall publish in the Federal Register a joint notice that, at minimum—

(aa) states that the proposed standard or requirement is publicly available; and

(bb) provides an opportunity for public comment regarding the proposed standard or requirement during the 90-day period beginning on the date of receipt by the Administrator and the Secretary of the proposed standard or requirement.

#### **(III) Review**

##### **(aa) In general**

As soon as practicable after the date of publication of a joint notice under subclause (II)—

(AA) the Administrator shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is at least as stringent as comparable standards and requirements under this subsection; and

(BB) the Secretary shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is in accordance with maritime safety and applicable maritime and navigation laws and regulations.

##### **(bb) Consultation**

In carrying out item (aa), the Administrator and the Secretary—

(AA) shall consult with the Governor of each Great Lakes State and representatives from the Federal and provincial governments of Canada;

(BB) shall take into consideration any relevant data or public comments received under subclause (II)(bb); and

(CC) shall not take into consideration any preliminary assessment by the Great Lakes Commission under clause (i)(III), or any dissenting opinion under subclause (I)(dd), except to the extent that such an assessment or opinion is relevant to the criteria for the applicable determination under item (aa).

#### **(IV) Approval or disapproval**

Not later than 180 days after the date of receipt of each proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall—

(aa) determine, as applicable, whether each proposed standard or other requirement satisfies the criteria under subclause (III)(aa);

(bb) approve each proposed standard or other requirement, unless the Administrator or the Secretary, as applicable, determines under item (aa) that the proposed standard or other requirement does not satisfy the criteria under subclause (III)(aa); and

(cc) submit to the Governor of each Great Lakes State, and publish in the Federal Register, a notice of the determination under item (aa).

#### **(V) Action on disapproval**

##### **(aa) Rationale and recommendations**

If the Administrator and the Secretary disapprove a proposed standard of performance or other requirement under subclause (IV)(bb), the notices under subclause (IV)(cc) shall include—

(AA) a description of the reasons why the standard or requirement is, as applicable, less stringent than a comparable standard or requirement under this subsection, inconsistent with maritime safety, or inconsistent with applicable maritime and navigation laws and regulations; and

(BB) any recommendations regarding changes the Governors of the Great Lakes States could make to conform the disapproved portion of the standard or requirement to the requirements of this subparagraph.

##### **(bb) Review**

Disapproval of a proposed standard or requirement by the Administrator and the Secretary under this subparagraph shall be considered to be a final agency action subject to judicial review under section 1369 of this title.

#### **(VI) Action on approval**

On approval by the Administrator and the Secretary of a proposed standard of

performance or other requirement under subclause (IV)(bb)—

(aa) the Administrator shall establish, by regulation, the proposed standard or requirement within the Great Lakes System in lieu of any comparable standard or other requirement promulgated under paragraph (4); and

(bb) the Secretary shall establish, by regulation, any requirements necessary to implement, ensure compliance with, and enforce the standard or requirement under item (aa), or to apply the proposed requirement, within the Great Lakes System in lieu of any comparable requirement promulgated under paragraph (5).

#### **(VII) No judicial review for certain actions**

An action or inaction of a Governor of a Great Lakes State or the Great Lakes Commission under this subparagraph shall not be subject to judicial review.

#### **(VIII) Great Lakes Compact**

Nothing in this subsection limits, alters, or amends the Great Lakes Compact<sup>2</sup> to which Congress granted consent in the Act of July 24, 1968 (Public Law 90-419; 82 Stat. 414).

#### **(IX) Authorization of appropriations**

There is authorized to be appropriated to the Great Lakes Commission \$5,000,000, to be available until expended.

#### **(C) Minimum Pacific Region requirements**

##### **(i) Definition of commercial vessel**

In this subparagraph, the term “commercial vessel” means a vessel operating between—

(I) 2 ports or places of destination within the Pacific Region; or

(II) a port or place of destination within the Pacific Region and a port or place of destination on the Pacific Coast of Canada or Mexico north of parallel 20 degrees north latitude, inclusive of the Gulf of California.

##### **(ii) Ballast water exchange**

###### **(I) In general**

Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel shall conduct a complete ballast water exchange in waters more than 50 nautical miles from shore.

###### **(II) Exemptions**

Subclause (I) shall not apply to a commercial vessel—

(aa) using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary; or

(bb) voyaging—

(AA) between or to a port or place of destination in the State of Washington, if the ballast water to be discharged from the commercial vessel

originated solely from waters located between the parallel 46 degrees north latitude, including the internal waters of the Columbia River, and the internal waters of Canada south of parallel 50 degrees north latitude, including the waters of the Strait of Georgia and the Strait of Juan de Fuca;

(BB) between ports or places of destination in the State of Oregon, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude;

(CC) between ports or places of destination in the State of California within the San Francisco Bay area east of the Golden Gate Bridge, including the Port of Stockton and the Port of Sacramento, if the ballast water to be discharged from the commercial vessel originated solely from ports or places within that area;

(DD) between the Port of Los Angeles, the Port of Long Beach, and the El Segundo offshore marine oil terminal, if the ballast water to be discharged from the commercial vessel originated solely from the Port of Los Angeles, the Port of Long Beach, or the El Segundo offshore marine oil terminal;

(EE) between a port or place of destination in the State of Alaska within a single Captain of the Port Zone;

(FF) between ports or places of destination in different counties of the State of Hawaii, if the vessel may conduct a complete ballast water exchange in waters that are more than 10 nautical miles from shore and at least 200 meters deep; or

(GG) between ports or places of destination within the same county of the State of Hawaii, if the vessel does not transit outside State marine waters during the voyage.

### (iii) Low-salinity ballast water

#### (I) In general

Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel that transports ballast water sourced from waters with a measured salinity of less than 18 parts per thousand and voyages to a Pacific Region port or place of destination with a measured salinity of less than 18 parts per thousand shall conduct a complete ballast water exchange—

(aa) not less than 50 nautical miles from shore, if the ballast water was sourced from a Pacific Region port or place of destination; or

(bb) more than 200 nautical miles from shore, if the ballast water was not sourced from a Pacific Region port or place of destination.

### (II) Exception

Subclause (I) shall not apply to a commercial vessel voyaging to a port or place of destination in the Pacific Region that is using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary to achieve standards of performance of—

(aa) less than 1 organism per 10 cubic meters, if that organism—

(AA) is living, or has not been rendered nonviable; and

(BB) is 50 or more micrometers in minimum dimension;

(bb) less than 1 organism per 10 milliliters, if that organism—

(AA) is living, or has not been rendered nonviable; and

(BB) is more than 10, but less than 50, micrometers in minimum dimension;

(cc) concentrations of indicator microbes that are less than—

(AA) 1 colony-forming unit of toxicogenic *Vibrio cholera* (serotypes O1 and O139) per 100 milliliters or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;

(BB) 126 colony-forming units of *escherichia coli* per 100 milliliters; and

(CC) 33 colony-forming units of intestinal enterococci per 100 milliliters; and

(dd) concentrations of such additional indicator microbes and viruses as may be specified in the standards of performance established by the Administrator under paragraph (4).

### (iv) General exceptions

The requirements of clauses (ii) and (iii) shall not apply to a commercial vessel if—

(I) complying with the requirement would compromise the safety of the commercial vessel;

(II) design limitations of the commercial vessel prevent a ballast water exchange from being conducted in accordance with clause (ii) or (iii), as applicable;

(III) the commercial vessel—

(aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or

(bb) retains all ballast water while in waters subject to those requirements; or

(IV) empty ballast tanks on the commercial vessel are sealed and certified by the Secretary in a manner that ensures that—

(aa) no discharge or uptake occurs; and

(bb) any subsequent discharge of ballast water is subject to those requirements.

**(D) Establishment of State no-discharge zones**

**(i) State prohibition**

Subject to clause (ii), after the effective date of regulations promulgated by the Secretary under paragraph (5), if any State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more types of discharge regulated under this subsection, whether treated or not treated, into such waters.

**(ii) Applicability**

A prohibition by a State under clause (i) shall not apply until the date on which the Administrator makes the applicable determinations described in clause (iii).

**(iii) Prohibition by Administrator**

**(I) Determination**

On application of a State, the Administrator, in concurrence with the Secretary (subject to subclause (II)), shall, by regulation, prohibit the discharge from a vessel of 1 or more discharges subject to regulation under this subsection, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(aa) prohibition of the discharge would protect and enhance the quality of the specified waters within the State;

(bb) adequate facilities for the safe and sanitary removal and treatment of the discharge are reasonably available for the water and all vessels to which the prohibition would apply;

(cc) the discharge can be safely collected and stored until a vessel reaches a discharge facility or other location; and

(dd) in the case of an application for the prohibition of discharges of ballast water in a port (or in any other location where cargo, passengers, or fuel are loaded and unloaded)—

(AA) the adequate facilities described in item (bb) are reasonably available for commercial vessels, after considering, at a minimum, water depth, dock size, pumpout facility capacity and flow rate, availability of year-round operations, proximity to navigation routes, and the ratio of pumpout facilities to the population and discharge capacity of commercial vessels operating in those waters; and

(BB) the prohibition will not unreasonably interfere with the safe loading and unloading of cargo, passengers, or fuel.

**(II) Concurrence with Secretary**

**(aa) Request**

The Administrator shall submit to the Secretary a request for written

concurrence with respect to a prohibition under subclause (I).

**(bb) Effect of failure to concur**

A failure by the Secretary to concur with the Administrator under subclause (I) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under item (aa) shall not prevent the Administrator from prohibiting the relevant discharge in accordance with subclause (III), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

(AA) documentation of the request submitted under item (aa); and

(BB) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the 60-day period beginning on the date of submission of the request.

**(III) Timing**

The Administrator shall approve or disapprove an application submitted under subclause (I) by not later than 90 days after the date on which the application is submitted to the Administrator.

**(E) Maintenance in effect of more-stringent standards**

In any case in which a requirement established under this paragraph is more stringent or environmentally protective than a comparable requirement established under paragraph (4), (5), or (6), the more-stringent or more-protective requirement shall control.

(June 30, 1948, ch. 758, title III, §312, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 871; amended Pub. L. 95-217, §59, Dec. 27, 1977, 91 Stat. 1596; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-4, title III, §311, Feb. 4, 1987, 101 Stat. 42; Pub. L. 104-106, div. A, title III, §325(b)-(c)(2), Feb. 10, 1996, 110 Stat. 254-259; Pub. L. 110-288, §4, July 29, 2008, 122 Stat. 2650; Pub. L. 115-282, title IX, §903(a)(1), (b), (c)(1), Dec. 4, 2018, 132 Stat. 4324, 4354, 4355.)

**Editorial Notes**

**REFERENCES IN TEXT**

For definition of Canal Zone, referred to in subsecs. (a)(4) and (m), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Sections 92, 93, and 633 of title 14, referred to in subsec. (p)(1)(J), were redesignated sections 501, 504, and 503, respectively, of title 14 by Pub. L. 115-282, title I, §105(b), Dec. 4, 2018, 132 Stat. 4200, and references to sections 92, 93, and 633 of title 14 deemed to refer to such redesignated sections, see section 123(b)(1) of Pub. L. 115-282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115-282 note preceding section 101 of Title 14, Coast Guard.

The Act of July 24, 1968, referred to in subsec. (p)(1)(L), (10)(B)(iii)(VIII), is Pub. L. 90-419, July 24, 1968, 82 Stat. 414, which is not classified to the Code.

The Safe Drinking Water Act, referred to in subsec. (p)(2)(B)(ii)(III), is title XIV of act July 1, 1944, as added

Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 903(a)(2)(A) of the Vessel Incidental Discharge Act of 2018, referred to in subsec. (p)(3)(B), is section 903(a)(2)(A) of title IX of Pub. L. 115-282, Dec. 4, 2018, 132 Stat. 4354, which repealed section 4711 of Title 16, Conservation, and provisions set out as a note under section 1342 of this title.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, referred to in subsec. (p)(3)(B), (5)(A)(ii)(IV), (C)(ii)(II)(bb)(AA), (cc), is title I of Pub. L. 101-646, Nov. 29, 1990, 104 Stat. 4761, which is classified principally to chapter 67 (§4701 et seq.) of Title 16, Conservation. Section 1101 of the Act (as in effect on the day before December 4, 2018), means section 1101 of the Act, which was classified to section 4711 of Title 16, prior to repeal by Pub. L. 115-282, title IX, §903(a)(2)(A)(i), Dec. 4, 2018, 132 Stat. 4354. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 16 and Tables.

Section 1414 of the Consolidated Appropriations Act, 2001 (Public Law 106-554; 114 Stat. 2763A-323), referred to in subsec. (p)(9)(A)(v), probably means section 1414 of title XIV of div. B of H.R. 5666 of the 106th Congress, as enacted into law by section 1(a)(4) of Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763, 2763A-322, which is set out in a note under section 1901 of this title.

The Act to Prevent Pollution from Ships, referred to in subsec. (p)(9)(B)(iii), is Pub. L. 96-478, Oct. 21, 1980, 94 Stat. 2297, which is classified principally to chapter 33 (§1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

The Coast Guard Authorization Act of 2010, referred to in subsec. (p)(9)(B)(iv), is Pub. L. 111-281, Oct. 15, 2010, 124 Stat. 2905. Title X of the Act is classified principally to chapter 51 (§3801 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

2018—Pub. L. 115-282, §903(b)(1), substituted “Marine sanitation devices; discharges incidental to the normal operation of vessels” for “Marine sanitation devices” in section catchline.

Subsec. (a). Pub. L. 115-282, §903(b)(1), inserted heading and substituted “In” for “For the purpose of” in introductory provisions.

Subsec. (a)(7). Pub. L. 115-282, §903(b)(2)(A), substituted “devices, marine pollution control device equipment, or vessels” for “devices or of vessels”.

Subsec. (a)(13). Pub. L. 115-282, §903(b)(2)(B), inserted “, except as provided in subsection (p),” after “means” in introductory provisions.

Subsec. (g)(1). Pub. L. 115-282, §903(b)(3)(A), (B), inserted “or marine pollution control device equipment” after “marine sanitation device” in two places and “or equipment” after “such device” and “test device”.

Subsec. (g)(2). Pub. L. 115-282, §903(b)(3)(A), (C), inserted “or marine pollution control device equipment” after “marine sanitation device” and “or equipment” after “the device”, “Any device”, and “certified test device” wherever appearing.

Subsec. (h). Pub. L. 115-282, §903(b)(4)(D), inserted heading.

Subsec. (h)(1). Pub. L. 115-282, §903(b)(4)(C), (D), designated existing provisions as par. (1), inserted heading, substituted “Subject to paragraph (2), after” for “After”, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and realigned margins.

Pub. L. 115-282, §903(b)(4)(A), inserted “and marine pollution control device equipment” after “marine sanitation device”.

Subsec. (h)(2). Pub. L. 115-282, §903(b)(4)(E), added par. (2). Former par. (2) redesignated subpar. (B) of subsec. (h)(1).

Pub. L. 115-282, §903(b)(4)(B), inserted “or any certified marine pollution control device equipment or element of design of such equipment” after “such device”.

Subsec. (h)(3), (4). Pub. L. 115-282, §903(b)(4)(C), redesignated pars. (3) and (4) as subpars. (C) and (D), respectively, of subsec. (h)(1).

Subsec. (k). Pub. L. 115-282, §903(c), designated first sentence of existing provisions as par. (2)(A), substituted “This” for “The provisions of this” and “operating, who may use, by agreement” for “operating and he may utilize by agreement” in par. (2)(A) as redesignated, inserted headings for subsec. (k), par. (2), and par. (2)(A), added pars. (1), (2)(B), (2)(C), and (3), and struck out former second sentence which read as follows: “The provisions of this section may also be enforced by a State.”

Subsec. (p). Pub. L. 115-282, §903(a)(1), added subsec. (p).

2008—Subsec. (o). Pub. L. 110-288 added subsec. (o).

1996—Subsec. (a)(8). Pub. L. 104-106, §325(c)(1)(A), substituted “corporation, association, or agency of the United States,” for “corporation, or association,”.

Subsec. (a)(12) to (14). Pub. L. 104-106, §325(c)(1)(B), (C), added pars. (12) to (14).

Subsec. (j). Pub. L. 104-106, §325(c)(2), substituted “subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable” for “subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable”.

Subsec. (n). Pub. L. 104-106, §325(b), added subsec. (n).

1987—Subsec. (f)(1). Pub. L. 100-4, §311(a), designated existing provision as subpar. (A), substituted “Except as provided in subparagraph (B), after” for “After”, and added subpar. (B).

Subsec. (k). Pub. L. 100-4, §311(b), inserted at end “The provisions of this section may also be enforced by a State.”

1977—Subsec. (a)(6). Pub. L. 95-217, §59(a), inserted “except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater” after “receive or retain body wastes”.

Subsec. (a)(10), (11). Pub. L. 95-217, §59(b), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 95-217, §59(c), inserted references to standards established under subsec. (c)(1)(B) of this section and to standards promulgated under subsec. (c) of this section.

Subsec. (c)(1). Pub. L. 95-217, §59(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(4). Pub. L. 95-217, §59(e), designated existing provisions as subpar. (A) and added subpar. (B).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (e) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

##### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

##### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

##### TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transi-



tion period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

#### PURPOSES OF 2018 AMENDMENT; FINDINGS

Pub. L. 115-282, title IX, §902, Dec. 4, 2018, 132 Stat. 4322, provided that:

“(a) **PURPOSES.**—The purposes of this title [see Short Title of 2018 Amendment note set out under section 1251 of this title] are—

“(1) to provide for the establishment of uniform, environmentally sound standards and requirements for the management of discharges incidental to the normal operation of a vessel;

“(2) to charge the Environmental Protection Agency with primary responsibility for establishing standards relating to the discharge of pollutants from vessels;

“(3) to charge the Coast Guard with primary responsibility for prescribing, administering, and enforcing regulations, consistent with the discharge standards established by the Environmental Protection Agency, for the design, construction, installation, and operation of the equipment and management practices required onboard vessels; and

“(4) to preserve the flexibility of States, political subdivisions, and certain regions with respect to the administration and enforcement of standards relating to the discharge of pollutants from vessels engaged in maritime commerce and transportation.

“(b) **FINDINGS.**—Congress finds that—

“(1) the Environmental Protection Agency is the principal Federal authority charged under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) with regulating through the issuance of permits for the discharge of pollutants into the navigable waters of the United States;

“(2) the Coast Guard is the principal Federal authority charged with administering, enforcing, and prescribing regulations relating to the discharge of pollutants from vessels; and

“(3) during the period of 1973 to 2010—

“(A) the Environmental Protection Agency promulgated regulations exempting certain discharges incidental to the normal operation of vessels from otherwise applicable permitting requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

“(B) Congress enacted laws on numerous occasions governing the regulation of discharges incidental to the normal operation of vessels, including—

“(i) the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.);

“(ii) the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.);

“(iii) the National Invasive Species Act of 1996 (16 U.S.C. 4701 note; Public Law 104-332) [see Short Title of 1996 Amendment note set out under section 4701 of this title];

“(iv) section 415 of the Coast Guard Authorization Act of 1998 (Public Law 105-383; 112 Stat. 3434) and section 623 of the Coast Guard and Maritime Transportation Act of 2004 (33 U.S.C. 1901 note; Public Law 108-293), which established interim and permanent requirements, respectively, for the regulation of vessel discharges of certain bulk cargo residue;

“(v) title XIV of division B of Appendix D of the Consolidated Appropriations Act, 2001 (Public Law 106-554; 114 Stat. 2763A-315) [33 U.S.C. 1901 note], which prohibited or limited certain vessel discharges in certain areas of Alaska;

“(vi) section 204 of the Maritime Transportation Security Act of 2002 ([former] 33 U.S.C. 1902a),

which established requirements for the regulation of vessel discharges of agricultural cargo residue material in the form of hold washings; and

“(vii) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.), which provided for the implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.”

#### PURPOSE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title III, §325(a), Feb. 10, 1996, 110 Stat. 254, provided that: “The purposes of this section [amending this section and section 1362 of this title and enacting provisions set out as a note below] are to—

“(1) enhance the operational flexibility of vessels of the Armed Forces domestically and internationally;

“(2) stimulate the development of innovative vessel pollution control technology; and

“(3) advance the development by the United States Navy of environmentally sound ships.”

#### COOPERATION IN NATIONAL DISCHARGE STANDARDS DEVELOPMENT

Pub. L. 104-106, div. A, title III, §325(d), Feb. 10, 1996, 110 Stat. 259, provided that: “The Administrator of the Environmental Protection Agency and the Secretary of Defense may, by mutual agreement, with or without reimbursement, provide for the use of information, reports, personnel, or other resources of the Environmental Protection Agency or the Department of Defense to carry out section 312(n) of the Federal Water Pollution Control Act [33 U.S.C. 1322(n)] (as added by subsection (b)), including the use of the resources—

“(1) to determine—

“(A) the nature and environmental effect of discharges incidental to the normal operation of a vessel of the Armed Forces;

“(B) the practicability of using marine pollution control devices on vessels of the Armed Forces; and

“(C) the effect that installation or use of marine pollution control devices on vessels of the Armed Forces would have on the operation or operational capability of the vessels; and

“(2) to establish performance standards for marine pollution control devices on vessels of the Armed Forces.”

#### CLEAN VESSELS

Pub. L. 102-587, title V, subtitle F, Nov. 4, 1992, 106 Stat. 5086, as amended by Pub. L. 109-59, title X, §10131, Aug. 10, 2005, 119 Stat. 1931, provided that:

“SEC. 5601. **SHORT TITLE.**

“This subtitle may be cited as the ‘Clean Vessel Act of 1992’.

“SEC. 5602. **FINDINGS; PURPOSE.**

“(a) **FINDINGS.**—The Congress finds the following:

“(1) The discharge of untreated sewage by vessels is prohibited under Federal law in all areas within the navigable waters of the United States.

“(2) The discharge of treated sewage by vessels is prohibited under either Federal or State law in many of the United States bodies of water where recreational boaters operate.

“(3) There is currently an inadequate number of pumpout stations for type III marine sanitation devices where recreational vessels normally operate.

“(4) Sewage discharged by recreational vessels because of an inadequate number of pumpout stations is a substantial contributor to localized degradation of water quality in the United States.

“(b) **PURPOSE.**—The purpose of this subtitle is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities.

“SEC. 5603. **DETERMINATION AND PLAN REGARDING STATE MARINE SANITATION DEVICE PUMPOUT STATION NEEDS.**

“(a) **SURVEY.**—Within 3 months after the notification under section 5605(b), each coastal State shall conduct a survey to determine—

“(1) the number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone of the State; and

“(2) the number of recreational vessels in the coastal waters of the State with type III marine sanitation devices or portable toilets, and the areas of those coastal waters where those vessels congregate.

“(b) PLAN.—Within 6 months after the notification under section 5605(b), and based on the survey conducted under subsection (a), each coastal State shall—

“(1) develop and submit to the Secretary of the Interior a plan for any construction or renovation of pumpout stations and waste reception facilities that are necessary to ensure that, based on the guidance issued under section 5605(a), there are pumpout stations and waste reception facilities in the State that are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State; and

“(2) submit to the Secretary of the Interior with that plan a list of all stations and facilities in the coastal zone of the State which are operational on the date of submittal.

“(c) PLAN APPROVAL.—

“(1) IN GENERAL.—Not later than 60 days after a plan is submitted by a State under subsection (b), the Secretary of the Interior shall approve or disapprove the plan, based on—

“(A) the adequacy of the survey conducted by the State under subsection (a); and

“(B) the ability of the plan, based on the guidance issued under section 5605(a), to meet the construction and renovation needs of the recreational vessels identified in the survey.

“(2) NOTIFICATION OF STATE; MODIFICATION.—The Secretary of the Interior shall promptly notify the affected Governor of the approval or disapproval of a plan. If a plan is disapproved, the Secretary of the Interior shall recommend necessary modifications and return the plan to the affected Governor.

“(3) RESUBMITTAL.—Not later than 60 days after receiving a plan returned by the Secretary of the Interior, the Governor shall make the appropriate changes and resubmit the plan.

“(d) INDICATION OF STATIONS AND FACILITIES ON NOAA CHARTS.—

“(1) IN GENERAL.—The Under Secretary of Commerce for Oceans and Atmosphere shall indicate, on charts published by the National Oceanic and Atmospheric Administration for the use of operators of recreational vessels, the locations of pumpout stations and waste reception facilities.

“(2) NOTIFICATION OF NOAA.—

“(A) LISTS OF STATIONS AND FACILITIES.—The Secretary of the Interior shall transmit to the Under Secretary of Commerce for Oceans and Atmosphere each list of operational stations and facilities submitted by a State under subsection (b)(2), by not later than 30 days after the date of receipt of that list.

“(B) COMPLETION OF PROJECT.—The Director of the United States Fish and Wildlife Service shall notify the Under Secretary of the location of each station or facility at which a construction or renovation project is completed by a State with amounts made available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, by not later than 30 days after the date of notification by a State of the completion of the project.

“SEC. 5604. FUNDING.

“(a) TRANSFER.—[Amended section 777c of Title 16, Conservation.]

“(b) ACCESS INCREASE.—[Amended section 777g of Title 16, Conservation.]

“(c) GRANT PROGRAM.—

“(1) MATCHING GRANTS.—The Secretary of the Interior may obligate an amount not to exceed the

amount made available under section 4(b)(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b)(2) [now 16 U.S.C. 777c(b)(3)], as amended by this Act), to make grants to—

“(A) coastal States to pay not more than 75 percent of the cost to a coastal State of—

“(i) conducting a survey under section 5603(a);

“(ii) developing and submitting a plan and accompanying list under section 5603(b);

“(iii) constructing and renovating pumpout stations and waste reception facilities; and

“(iv) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(B) inland States, which can demonstrate to the Secretary of the Interior that there are an inadequate number of pumpout stations and waste reception facilities to meet the needs of recreational vessels in the waters of that State, to pay 75 percent of the cost to that State of—

“(i) constructing and renovating pumpout stations and waste reception facilities in the inland State; and

“(ii) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

“(2) PRIORITY.—In awarding grants under this subsection, the Secretary of the Interior shall give priority consideration to grant applications that—

“(A) provide for public/private partnership efforts to develop and operate pumpout stations and waste reception facilities; and

“(B) propose innovative ways to increase the availability and use of pumpout stations and waste reception facilities.

“(d) DISCLAIMER.—Nothing in this subtitle shall be interpreted to preclude a State from carrying out the provisions of this subtitle with funds other than those described in this section.

“SEC. 5605. GUIDANCE AND NOTIFICATION.

“(a) ISSUANCE OF GUIDANCE.—Not later than 3 months after the date of the enactment of this subtitle [Nov. 4, 1992], the Secretary of the Interior shall, after consulting with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, issue for public comment pumpout station and waste reception facility guidance. The Secretary of the Interior shall finalize the guidance not later than 6 months after the date of enactment of this subtitle. The guidance shall include—

“(1) guidance regarding the types of pumpout stations and waste reception facilities that may be appropriate for construction, renovation, operation, or maintenance with amounts available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, and appropriate location of the stations and facilities within a marina or boatyard;

“(2) guidance defining what constitutes adequate and reasonably available pumpout stations and waste reception facilities in boating areas;

“(3) guidance on appropriate methods for disposal of vessel sewage from pumpout stations and waste reception facilities;

“(4) guidance on appropriate connector fittings to facilitate the sanitary and expeditious discharge of sewage from vessels;

“(5) guidance on the waters most likely to be affected by the discharge of sewage from vessels; and

“(6) other information that is considered necessary to promote the establishment of pumpout facilities to reduce sewage discharges from vessels and to protect United States waters.

“(b) NOTIFICATION.—Not later than one month after the guidance issued under subsection (a) is finalized,

the Secretary of the Interior shall provide notification in writing to the fish and wildlife, water pollution control, and coastal zone management authorities of each State, of—

- “(1) the availability of amounts under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]) to implement the Clean Vessel Act of 1992; and
- “(2) the guidance developed under subsection (a).

“SEC. 5606. EFFECT ON STATE FUNDING ELIGIBILITY.

“This subtitle shall not be construed or applied to jeopardize any funds available to a coastal State under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), if the coastal State is, in good faith, pursuing a survey and plan designed to meet the purposes of this subtitle.

“SEC. 5607. APPLICABILITY.

“The requirements of section 5603 shall not apply to a coastal State if within six months after the date of enactment of this subtitle [Nov. 4, 1992] the Secretary of the Interior certifies that—

- “(1) the State has developed and is implementing a plan that will ensure that there will be pumpout stations and waste reception facilities adequate to meet the needs of recreational vessels in the coastal waters of the State; or
- “(2) existing pumpout stations and waste reception facilities in the coastal waters of the State are adequate to meet those needs.

“SEC. 5608. DEFINITIONS.

“For the purposes of this subtitle the term:

- “(1) ‘coastal State’—
  - “(A) means a State of the United States in, or bordering on the Atlantic, Pacific, or Arctic Ocean; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes;
  - “(B) includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and
  - “(C) does not include a State for which the ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in section 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), is less than one.
- “(2) ‘coastal waters’ means—
  - “(A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and
  - “(B) in other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bay, lagoons, bays, ponds, and estuaries.
- “(3) ‘coastal zone’ has the same meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1));
- “(4) ‘inland State’ means a State which is not a coastal state;
- “(5) ‘type III marine sanitation device’ means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;
- “(6) ‘pumpout station’ means a facility that pumps or receives human body wastes out of type III marine sanitation devices installed on board vessels;
- “(7) ‘recreational vessel’ means a vessel—
  - “(A) manufactured for operation, or operated, primarily for pleasure; or
  - “(B) leased, rented, or chartered to another for the latter’s pleasure; and
- “(8) ‘waste reception facility’ means a facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include lavatories.”

**Executive Documents**

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

**§ 1323. Federal facilities pollution control**

**(a) Compliance with pollution control requirements by Federal entities**

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with section 1441 et seq. of title 28. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to ex-