



ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

40 CFR Part 1700

[EPA-HQ-OW-2013-0469; FRL- 9903-49-OW]

RIN 2040-AD39

Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II

AGENCY: Environmental Protection Agency and Department of Defense.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Defense (DoD) are proposing performance standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces into the navigable waters of the United States, the territorial seas, and the contiguous zone. The proposed standards would reduce the adverse environmental impacts associated with the discharges, stimulate the development of improved pollution control devices, and advance the development of environmentally sound ships by the Armed Forces. The proposed standards are designed to be consistent with the effluent limitations included in the recently issued National Pollutant Discharge Elimination System (NPDES) general permit for discharges incidental to the normal operation of a non-military vessel.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket No. EPA-HQ-OW-2013-0469, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow on-line instructions for submitting comments.

Mail: Send an original and one copy of your comments and enclosures (including references) to EPA Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822-IT, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, Attention Docket No. EPA-HQ-OW-2013-0469.

Hand Delivery: EPA Water Docket, EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, N.W., Washington, DC 20004, Docket No. EPA-HQ-OW-2013-0469.

Deliveries to the docket are accepted only during their normal hours of operation: 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, call (202) 566-2426, to schedule an appointment.

E-mail: ow-docket@epa.gov; Attention Docket No. EPA-HQ-OW-2013-0469. To ensure that EPA can properly respond to comments, commenters should cite the paragraph(s) or section(s) in the proposed rule to which each comment refers. Commenters should use a separate paragraph for each issue discussed, and must submit any references cited in their comments. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment. Electronic files should avoid any form of encryption and should be free of any defects or viruses.

Instructions: Direct your comments to docket ID number EPA-HQ-OW-2013-0469. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The Federal <http://www.regulations.gov> web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid any form of encryption and should be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at <http://www.regulations.gov>. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and

access those documents in the public docket that are available electronically. Once at the website, enter the appropriate Docket ID No. in the “Search” box to view the docket. Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA’s electronic public docket. EPA policy is that copyrighted material will not be placed in EPA’s electronic public docket but will be available only in hard copy in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Water Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue (EPA West Building), N.W., Washington, DC 20004. The Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Water Docket is (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: Katherine B. Weiler, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; (202) 566-1280; weiler.katherine@epa.gov, or Mike Pletke, Chief of Naval Operations (N45), 2000 Navy Pentagon (Rm 2D253), Washington, DC 20350-2000; (703) 695-5184; mike.pletke@navy.mil.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

Table of Contents

I. General Information

A. Legal Authority for the Proposed Rule

B. Purpose of the Proposed Rule

C. What Vessels are Potentially Affected by the Proposed Rule?

D. What is the Geographic Scope of the Proposed Rule?

E. Rulemaking Process

F. Summary of Public Outreach and Consultation with Federal Agencies, States, Territories, and Tribes

G. Supporting Documentation

H. What Should I Consider as I Prepare My Comments?

II. UNDS Performance Standards Development

A. Nature of the Discharge

B. Environmental Effects

C. Cost, Practicability, and Operational Impacts

D. Applicable U.S. and International Law

E. Definitions

III. UNDS Discharge Analysis and Performance Standards

A. Aqueous Film-Forming Foam

B. Chain Locker Effluent

C. Distillation and Reverse Osmosis Brine

D. Elevator Pit Effluent

E. Gas Turbine Water Wash

F. Non-Oily Machinery Wastewater

G. Photographic Laboratory Drains

H. Seawater Cooling Overboard Discharge

I. Seawater Piping Biofouling Prevention

J. Small Boat Engine Wet Exhaust

K. Welldeck Discharges

IV. Additional Information of the Proposed Rule

V. Related Acts of Congress and Executive Orders

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:
Improving Regulation and Regulatory Review

B. Paperwork Reduction Act

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement
Fairness Act of 1996

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy
Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 13112: Invasive Species

K. Executive Order 13089: Coral Reef Protection

L. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority
Populations and Low-Income Populations

VI. Appendix A.

I. General Information

A. Legal Authority for the Proposed Rule

EPA and DoD propose this rule under the authority of Clean Water Act (CWA) § 312, 33 U.S.C. 1322. Section 325 of the National Defense Authorization Act of 1996 ("NDAA"), entitled "Discharges from Vessels of the Armed Forces" (Pub. L. 104-106, 110 Stat. 254), amended CWA § 312 to require the Administrator of the U.S. Environmental Protection Agency (Administrator) and the Secretary of Defense of the U.S. Department of Defense (Secretary) to develop uniform national standards to control certain discharges incidental to the normal operation of a vessel of the Armed Forces. The term Uniform National Discharge Standards or "UNDS" is used in this preamble to refer to the provisions in CWA §§ 312(a)(12)-(14) & (n) (33 U.S.C. 1322(a)(12)-(14) & (n)).

B. Purpose of the Proposed Rule

UNDS are intended to enhance the operational flexibility of vessels of the Armed Forces domestically and internationally, stimulate the development of innovative vessel pollution control technology, and advance the development by the U.S. Navy of environmentally sound ships. Section 312(n)(3)(A) of the CWA requires EPA and DoD to promulgate uniform national discharge standards for certain discharges incidental to the normal operation of a vessel of the Armed Forces (CWA § 312(a)(12)), unless the Secretary finds that compliance with UNDS would not be in the national security interests of the United States (CWA § 312(n)(1)).

The proposed rule would amend Title 40 Code of Federal Regulations (CFR) part 1700 to establish performance standards for 11 of the discharges incidental to the normal operation of a vessel of the Armed Forces from among the 25 discharges for which EPA and DoD previously determined (64 FR 25126) that it is reasonable and practicable to require a marine pollution

control device (MPCD). The 11 discharges addressed by the proposal are the following: aqueous film-forming foam; chain locker effluent; distillation and reverse osmosis brine; elevator pit effluent; gas turbine water wash; non-oily machinery wastewater; photographic laboratory drains; seawater cooling overboard discharge; seawater piping biofouling prevention; small boat engine wet exhaust; and welldeck discharges.

The proposed performance standards would not become enforceable until after promulgation of a final rule, as well as promulgation of regulations by DoD under CWA § 312(n)(5)(C) to govern the design, construction, installation, and use of a MPCD.

UNDS do not apply to the following discharges from vessels of the Armed Forces: overboard discharges of rubbish, trash, garbage, or other such materials; sewage; air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or discharges that require permitting under the NPDES program, including operational discharges and other discharges that are not incidental to the normal operation of a vessel of the Armed Forces.

C. What Vessels are Potentially Affected by the Proposed Rule?

The proposed rule would apply to vessels of the Armed Forces. For the purposes of the rulemaking, the term “vessel of the Armed Forces” is defined at CWA § 312(a)(14). Vessel of the Armed Forces means any vessel owned or operated by the U.S. Department of Defense (i.e., U.S. Navy, Military Sealift Command, U.S. Marine Corps, U.S. Army, and U.S. Air Force), other than a time or voyage chartered vessel, as well as any U.S. Coast Guard vessel designated by the Secretary of the Department in which the U.S. Coast Guard is operating. The preceding list is not intended to be exhaustive, but rather provides a guide for the reader regarding the vessels of the Armed Forces to be regulated by the proposed rule. The proposed rule would not

apply to commercial vessels; private vessels; vessels owned or operated by state, local, or tribal governments; vessels under the jurisdiction of the U.S. Army Corps of Engineers; certain vessels under the jurisdiction of the U.S. Department of Transportation; vessels preserved as memorials and museums; vessels under construction; vessels in drydock; amphibious vehicles; and, as noted above, time or voyage chartered vessels. For answers to questions regarding the applicability of this action to a particular vessel, consult one of the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the Geographic Scope of the Proposed Rule?

The proposed rule would be applicable to discharges from a vessel of the Armed Forces operating in the navigable waters of the United States, territorial seas, and the contiguous zone (CWA § 1322(n)(8)(A)). Together, the preamble refers to these waters as “waters subject to UNDS.” Sections 502(7), 502(8), and 502(9) of the CWA define the term “navigable waters,” “territorial seas,” and “contiguous zone” respectively. The term “navigable waters” means waters of the United States, including the territorial seas. The United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands. The term “territorial seas” means the belt of seas that generally extends three miles seaward from the line of ordinary low water along the portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters. The term “contiguous zone” means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone. Generally, the contiguous zone extends seaward for the next nine miles (i.e., from three to 12 miles from the

U.S. coastline). The proposed rule would not be applicable seaward of the contiguous zone. The term "waters subject to UNDS" is also proposed for addition to 40 CFR 1700.3 (definitions).

E. Rulemaking Process

The UNDS rulemaking is a joint rulemaking between EPA and DoD and is under development in three phases. The first two phases reflect joint rulemaking between EPA and DoD; the third phase is a DoD-only rule. The first phase is complete (64 FR 25126). The proposed rule is part of Phase II.

Phase I

EPA and DoD promulgated the Phase I regulations on May 10, 1999 (64 FR 25126), and these existing regulations are codified at 40 CFR part 1700. During Phase I, EPA and DoD identified the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require control with a MPCD to mitigate potential adverse impacts on the marine environment (CWA § 312(n)(2)), as well as those discharges for which it is not. Section 312(a)(13) of the CWA defines a MPCD as any equipment or management practice, for installation or use on a vessel of the Armed Forces, that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel, and determined to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth for UNDS.

During Phase I, EPA and DoD, identified the following 25 discharges as requiring control with a MPCD: Aqueous Film-Forming Foam; Catapult Water Brake Tank and Post-Launch Retraction Exhaust; Chain Locker Effluent; Clean Ballast; Compensated Fuel Ballast; Controllable Pitch Propeller Hydraulic Fluid; Deck Runoff; Dirty Ballast; Distillation and Reverse Osmosis Brine; Elevator Pit Effluent; Firemain Systems; Gas Turbine Water Wash;

Graywater; Hull Coating Leachate; Motor Gasoline Compensating Discharge; Non-Oily Machinery Wastewater; Photographic Laboratory Drains; Seawater Cooling Overboard Discharge; Seawater Piping Biofouling Prevention; Small Boat Engine Wet Exhaust; Sonar Dome Discharge; Submarine Bilgewater; Surface Vessel Bilgewater/Oil-Water Separator Discharge; Underwater Ship Husbandry; and Welldeck Discharges (40 CFR 1700.4).

During Phase I, EPA and DoD, identified the following 14 discharges as not requiring control with a MPCD: Boiler Blowdown; Catapult Wet Accumulator Discharge; Cathodic Protection; Freshwater Layup; Mine Countermeasures Equipment Lubrication; Portable Damage Control Drain Pump Discharge; Portable Damage Control Drain Pump Wet Exhaust; Refrigeration/Air Conditioning Condensate; Rudder Bearing Lubrication; Steam Condensate; Stern Tube Seals and Underwater Bearing Lubrication; Submarine Acoustic Countermeasures Launcher Discharge; Submarine Emergency Diesel Engine Wet Exhaust; and Submarine Outboard Equipment Grease and External Hydraulics.

As of the effective date of the Phase I rule (June 9, 1999), neither states nor political subdivisions of states may adopt or enforce any state or local statutes or regulations with respect to the 14 discharges that were identified as not requiring control, except to establish no-discharge zones (CWA §§ 312(n)(6)(A) & 312(n)(7)). However, section 312(n)(5)(D) of the CWA authorizes a Governor of any State to submit a petition to DoD and EPA requesting the re-evaluation of a prior determination that a MPCD is required for a particular discharge (40 CFR 1700.4) or a MPCD is not required for a particular discharge (40 CFR 1700.5) if there is significant new information, not considered previously, that could reasonably result in a change to the determination (CWA § 312(n)(5)(D) & 40 CFR 1700.11).

Phase II

Section 312(n)(3) of the CWA provides for Phase II and requires EPA and DoD to develop Federal performance standards for each of the 25 discharges identified in Phase I as requiring control. In doing so, EPA and DoD are required to consult with the Department in which the U.S. Coast Guard is operating, the Secretary of Commerce, interested states, the Secretary of State, and other interested Federal agencies. In promulgating Phase II performance standards, CWA § 312(n)(2)(B) directs EPA and DoD to consider seven factors: the nature of the discharge; the environmental effects of the discharge; the practicability of using the MPCD; the effect that installation or use of the MPCD would have on the operation or the operational capability of the vessel; applicable U.S. law; applicable international standards; and the economic costs of installation and use of the MPCD. Section 312(n)(3)(C) of the CWA further provides that EPA and DoD may establish discharge standards that (1) distinguish among classes, types, and sizes of vessels; (2) distinguish between new and existing vessels; and (3) provide for a waiver of applicability of standards as necessary or appropriate to a particular class, type, age, or size of vessel.

EPA and DoD have developed processes to establish Phase II standards in two separate batches. The first batch of performance standards is proposed in the rule and addresses 11 of the 25 discharges identified as requiring control (64 FR 25126). The second batch of performance standards—the remaining 14 discharges—will be proposed in a separate, subsequent notice.

In developing the Phase II performance standards, EPA and DoD referenced the NPDES general permit that EPA proposed in 2011 for discharges incidental to the normal operation of a vessel as the “baseline” for each comparable discharge incidental to the normal operation of a vessel of the Armed Forces (76 FR 76716). The NPDES proposed Small Vessel General Permit and the final Vessel General Permit provide for CWA authorization of discharges incidental to

the normal operation of non-military and non-recreational vessels extending to the outer reach of the 3-mile territorial sea as defined in CWA § 502(8). The proposed and final NPDES vessel general permits include effluent limits that are based on both the technology available to treat the pollutants (i.e., technology-based effluent limitations), and limits that would be protective of the designated uses of the receiving water (water quality-based effluent limits), including both non-numeric (e.g., management practices) and numeric limitations. Additional information on NPDES permitting can be found on-line at <http://cfpub.epa.gov/npdes/>. In the proposed rule preamble, EPA and DoD refer to these NPDES permits collectively as the "VGP."

Using the VGP as a baseline for developing the MPCD performance standard(s) for discharges incidental to the normal operation of a vessel of the Armed Forces allowed EPA and DoD to maximize the use of EPA's scientific and technical work developed to support the VGP and to adapt, as appropriate, the VGP technology-based effluent limitations and water quality-based effluent limitations for application to discharges incidental to the normal operation of a vessel of the Armed Forces. EPA and DoD also considered relevant water quality standards, including numeric and narrative criteria, designated uses, and anti-degradation policies in order to evaluate the potential environmental effects of the discharges consistent with CWA § 312(n)(2)(B)(ii).

Phase III

Phase III of UNDS requires DoD, in consultation with EPA and the Secretary of the Department in which the U.S. Coast Guard is operating, within one year of finalization of the Phase II standards, to promulgate regulations governing the design, construction, installation, and use of MPCDs necessary to meet the discharge performance standards. DoD will implement the Phase III regulations under the authority of the Secretary as a DoD publication. The Phase III

regulations would be publicly released and made available on the following website <http://www.dtic.mil/whs/directives>. Similar to Phase II, Phase III will be promulgated in two batches. Phase III-Batch One will address the 11 discharges proposed in the proposed rule and Phase III-Batch Two will address the remaining 14 discharges.

Following the effective date of regulations under Phase III, it will be unlawful for a vessel of the Armed Forces to operate within waters subject to UNDS if the vessel is not equipped with the required MPCD meeting the final Phase II standards (CWA § 312 (n)(7)). It also will be unlawful for a vessel of the Armed Forces to discharge a regulated UNDS discharge into waters where a prohibition on the discharge has been established (i.e., to discharge into an UNDS no-discharge zone) (CWA § 312(n)(8)). Any person in violation of this requirement shall be liable to a civil penalty of not more than \$5,000 for each violation (CWA § 312(j)). The Secretary of the Department in which the U.S. Coast Guard is operating is empowered to enforce these provisions and may utilize law enforcement officers, EPA personnel and facilities, other Federal agencies, or the states to carry out these provisions. States may also enforce these provisions (CWA §§ 312(k) & (n)(9)).

In addition, as of the effective date of Phase III regulations, neither states nor political subdivisions of states may adopt or enforce any state or local statute or regulation with respect to discharges identified as requiring control, except to establish no-discharge zones (CWA § 312(n)(7)). CWA § 312(n)(7) provides for the establishment of no-discharge zones either (A) by state prohibition after application and a determination by EPA, or (B) directly by EPA prohibition. The Phase I UNDS regulations established the criteria and procedures for establishing no-discharge zones (40 CFR 1700.9-1700.10).

If a state determines that the protection and enhancement of the quality of some or all of

its waters require greater environmental protection, the state may prohibit one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into those waters (40 CFR 1700.9). A state prohibition does not apply until after the Administrator determines that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) 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 (3) 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 (40 CFR 1700.9(b)(2)).

Alternatively, a state may request that EPA prohibit, by regulation, the discharge of one or more discharges incidental to the normal operation of a vessel of the Armed Forces, whether treated or not, into specified waters within a state (40 CFR 1700.10). In this case, EPA would make a determination that the protection and enhancement of the quality of the specified waters requires a prohibition of the discharge. As with the application of a state prohibition described above, the Administrator would need to determine that (1) the protection and enhancement of the quality of the specified waters within the state require a prohibition of the discharge into the waters; (2) 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 (3) 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 (40 CFR 1700.9(b)(2)). EPA may not, however, disapprove a state application for this latter type of prohibition for the sole reason that there are not adequate

facilities for the safe and sanitary removal of such discharges (CWA §§ 312(n)(7)(B)(ii) and 40 CFR 1700.10(b)).

The statute also requires EPA and DoD to review the determinations and standards every five years, and if necessary, to revise them based on significant new information. Specifically, CWA §§ 312(n)(5)(A) and (B) contain provisions for reviewing and modifying both of the following determinations: (1) whether control should be required for a particular discharge, and (2) the substantive standard of performance for a discharge for which control is required. A Governor also may petition the Administrator and the Secretary to review UNDS determinations and standards if there is significant new information, not considered previously, that could reasonably result in a change to the determination or standard (CWA § 312(n)(5)(D) & 40 CFR 1700.11).

F. Summary of Public Outreach and Consultation with Federal Agencies, States, Territories, and Tribes

During the development of the proposed Phase II rule, EPA and DoD consulted with other Federal agencies, states, and tribes regarding the enhancement of the operational flexibility of vessels of the Armed Forces domestically and internationally; development of innovative vessel pollution control technology; and advancement of the development by the U.S. Navy of environmentally sound ships. In addition, EPA and DoD reviewed comments on the VGP from Federal agencies, states, territories, and environmental organizations.

G. Supporting Documentation

The proposed rule is supported by “Technical Development Document (TDD) Phase I Uniform National Discharge Standards (UNDS) for Vessels of the Armed Forces,” the draft and final UNDS Phase I rules, various VGP documents, including, but not limited to the “Proposed

2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),” the “Final 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),” the “Vessel General Permit (VGP) Fact Sheet,” the “Proposed Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet (sVGP),” the “Small Vessel General Permit (sVGP) Fact Sheet,” the “Economics and Benefits Analysis of the Proposed and Final 2013 Vessel General Permit (VGP),” “Economics and Benefits Analysis of the Proposed 2013 Small Vessel General Permit (sVGP),” “Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet,” and “Environmentally Acceptable Lubricants.” These documents are available from the EPA Water Docket, Docket No. EPA-HQ-OW-2013-0469 (Email: ow-docket@epa.gov; Phone Number: (202) 566-2426; Mail: Water Docket, *Mail Code*: 2822-IT, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or Online: <http://www.regulations.gov>). The VGP background documents also are available online: <http://www.epa.gov/npdes/vessels>.

H. What Should I Consider as I Prepare My Comments?

The public may submit comments in written or electronic form. Electronic comments must be identified by the docket number EPA-HQ-OW-2013-0469. These electronic submissions will be accepted in Microsoft Word or Adobe PDF. If your comment cannot be read due to technical difficulties and you cannot be contacted for clarification, EPA and DoD may not be able to consider your comment. Avoid the use of special characters and any form of encryption.

Tips for Preparing Comments. Please follow these guidelines as you prepare your comments so that EPA and DoD can better address them in a timely manner.

1. Identify the proposed rule by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Explain why you agree or disagree with any proposed performance standards; suggest alternatives and substitute language for your requested changes.
3. Describe any assumptions and provide any technical information and/or data that you used.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. Explain your views as clearly as possible.

Make sure to submit your comments by the comment period deadline. EPA and DoD are not obligated to accept or consider late comments.

II. UNDS Performance Standards Development

During the development of the proposed discharge performance standards, EPA and DoD analyzed the information from Phase I of UNDS and considered the VGP effluent limitations as well as the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD determined that the VGP effluent limitations, which include technology-based and water quality-based effluent limitations, provide a sound basis for developing performance standards for the 11 discharges covered in the proposed rule. EPA and DoD used the VGP effluent limitations language and adapted the language as necessary to incorporate the considerations of the UNDS Phase I information and the seven statutory factors. The subsections below outline EPA and DoD's approach to considering the seven statutory factors in the development of the proposed discharge standards.

EPA and DoD invite comment on the two agencies' approach to use the VGP as a baseline from which to develop the performance standards for the discharges identified in Phase I that require control.

A. Nature of the Discharge

During Phase I, EPA and DoD gathered information on the discharges incidental to the normal operation of a vessel of the Armed Forces and developed "nature of discharge" reports. The "nature of discharge" reports discuss how the discharge is generated, volumes and frequencies of the generated discharge, where the discharge occurs, and the constituents present in the discharge. In addition, EPA and DoD reviewed relevant discharge information in the supporting documentation of the VGP. The nature of the discharge reports can be found in Appendix A of the Technical Development Document – EPA 821-R-99-001,

B. Environmental Effects

Discharges incidental to the normal operation of a vessel of the Armed Forces have the potential to negatively impact the aquatic environment. The discharges contain a wide variety of constituents that have the potential to negatively impact aquatic species and habitats. These discharges can contain aquatic nuisance species (ANS), nutrients, thermal pollution, bacteria and/or pathogens (e.g., E. coli and fecal coliform), oil and grease, metals, most conventional pollutants (e.g., organic matter, bicarbonate, and total suspended solids), and other toxic and non-conventional pollutants with toxic effects. While it is unlikely that these discharges would cause an acute or chronic exceedance of water quality criteria across a large water body, these discharges have the potential to cause adverse environmental impacts on a more localized scale due to the “end-of-pipe” nature of the discharges. For each of the 11 discharges below, EPA and DoD discuss the constituents of concern released into the environment and potential water

quality impacts. The proposed performance standards would reduce the discharge of constituents of concern and mitigate the environmental risks to the receiving waters.

C. Cost, Practicability, and Operational Impacts

The population of vessels of the Armed Forces affected by the proposed rule encompasses more than 6,000 vessels distributed among the U.S. Navy, Military Sealift Command (MSC), U.S. Coast Guard, U.S. Army, U.S. Marine Corps, and U.S. Air Force. These vessels range in design and size from small boats with lengths of less than 20 feet for coastal operations to aircraft carriers with lengths of over 1,000 feet for global operations.

Approximately 82 % of the vessels of the Armed Forces are less than 79 feet in length. Larger vessels (i.e., with length equal to or greater than 79 feet) comprise 18 % of the vessels of the Armed Forces. EPA and DoD considered vessel class, type, and size when developing the proposed discharge standards as not all vessels have the same discharges. For more information on the various vessel classes, characteristics, and mission, see Appendix A.

EPA and DoD assessed the relative costs, practicability, and operational impacts of the proposed rule by comparing current operating conditions and practices of vessels of the Armed Forces with the anticipated operating conditions and practices that would be required to meet the proposed discharge performance standards.

EPA and DoD determined that the vessels of the Armed Forces are generally implementing the proposed operating conditions and practices for all 11 discharges; therefore, it is anticipated that any incremental increase in performance costs, practicability, and operational impacts will be marginal for these discharges.

D. Applicable U.S. and International Law

EPA and DoD reviewed U.S. laws and international standards that would be relevant to discharges incidental to the normal operation of a vessel of the Armed Forces. A number of U.S. environmental laws include specific provisions for Federal facilities and properties that may result in different environmental requirements for Federal and non-federal entities. Similarly, many international treaties do not apply to vessels of the Armed Forces because they are entitled to sovereign immunity under international law or apply different approaches to adoption of appropriate environmental control measures consistent with the objects and purposes of such treaties. EPA and DoD incorporated any relevant information in the development of the proposed discharge standards after reviewing the requirements of the following laws and treaties: International Convention for the Prevention of Pollution from Ships (also referred to as MARPOL); International Convention on the Control of Harmful Anti-Fouling Systems on Ships; International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004; Act to Prevent Pollution from Ships; CWA section 311, as amended by the Oil Pollution Control Act of 1990; Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); Hazardous Materials Transportation Act; Title X of the Coast Guard Authorization Act of 2010; National Marine Sanctuaries Act; Antiquities Act of 1906; Resource Conservation and Recovery Act; Toxic Substances Control Act; and the VGP. EPA and DoD invite comment on the application of the laws and international standards considered in the development of the proposed performance standards.

E. Definitions

EPA and DoD propose adding UNDS definitions to 40 CFR part 1700. Specifically, the proposal would define the terms: bioaccumulative; biodegradable; environmentally acceptable lubricants; federally-protected waters; hazardous material; non-toxic; person in charge; toxic

materials; and waters subject to UNDS. EPA and DoD are defining these terms to support the proposal of the performance standards described in the following section. These definitions intend to clarify, simplify, and/or improve understanding of the proposed performance standards. EPA and DoD invite comment on these definitions as applied to the specific proposed performance standards.

III. UNDS Discharge Analysis and Performance Standards

This section provides additional detail regarding the nature of the 11 discharges and the potential for adverse environmental effects associated with the discharges. The section also describes the proposed MPCD determined to be reasonable and practicable to mitigate the adverse impacts to the marine environment.

The proposed performance standards described in each section below would apply to discharges incidental to the normal operation of a vessel of the Armed Forces, operating within waters subject to UNDS, except as otherwise expressly excluded in the “exceptions” section of the proposed rule (40 CFR 1700.39). In addition, if two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge (40 CFR 1700.40). Furthermore, recordkeeping (40 CFR 1700.41) and non-compliance reporting (40 CFR 1700.42) apply generally to each proposed performance standard unless expressly provided in a particular performance standard.

A. Aqueous Film-Forming Foam

1. Nature of Discharge

Aqueous film-forming foam (AFFF) is the primary firefighting agent used to extinguish flammable liquid fires on surface ships of the Armed Forces. For the purposes of UNDS, AFFF is the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations (i.e., non-emergency, but routine situations) (40 CFR 1700.4(a)). UNDS do not apply to the operational AFFF discharged to prevent loss of life, personal injury, vessel endangerment, or severe damage to the vessel (e.g., firefighting) (40 CFR 1700.39(a)).

AFFF or fluoroprotein foam concentrate is a foam concentrate mixed with seawater to form a diluted seawater foam solution (3-6 % AFFF). Fluoroprotein foam is a protein-based material to which fluorinated surfactants have been added to improve fluidity and surface tension properties, while reducing the tendency of the protein base to absorb liquids. The diluted seawater solution is sprayed as foam on the fire and is applied with both fire hoses and fixed sprinkler devices. However, only the diluted seawater foam solution is discharged; the actual concentrate is never discharged. As such, AFFF contains constituents found both in the foam concentrate (e.g., perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA)) and in the firemain (e.g., copper and microorganisms). Some alternatives to AFFF exist that have lower concentrations of perfluorinated surfactants, or contain non-fluorinated surfactants, that are less persistent than AFFF or fluoroprotein foam.

AFFF discharges occur during training, planned maintenance, system testing and inspections, or flight deck certifications. During or after these activities occur, the seawater foam solution is discharged either directly overboard from hoses, washed overboard from accumulations on the flight deck, or drained to the bilge. These training, maintenance, and testing cases generally occur annually, at 18 month intervals, and/or at 3 year intervals depending on the vessel requirements.

Approximately 10 % of the vessels of the Armed Forces (i.e., aircraft carriers, surface combatants, amphibious support ships, and most classes of patrol ships and auxiliary ships) discharge AFFF. Vessels less than 79 feet in length are not expected to have seawater foam firefighting systems. For more information regarding AFFF, please see the AFFF NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

AFFF could negatively impact receiving waters due to the constituents in the foam concentrate and the copper and microorganisms found in the firemain system.

The constituents of AFFF concentrate include water, 2-(2-butoxyethoxy)-ethanol, urea, alkyl sulfate salts, amphoteric fluoroalkylamide derivative, perfluoroalkyl sulfonate salts, triethanolamine, and methyl-1H-benzotriazole. In addition, because the seawater mixed with the AFFF concentrate comes from the vessel's firemain system, the discharge may also include bis(2-ethylhexyl) phthalate, nitrogen (measured as total Kjeldahl nitrogen), copper, nickel, iron, and microorganisms which can be found in the actual piping of the firemain system.

The concentration of many of the constituents in the AFFF, particularly bis(2-ethylhexyl) phthalate, copper, nickel, and iron could negatively impact the receiving waters and could potentially contribute to an exceedance of relevant recommended water quality criteria. The PFOS found in the AFFF is a persistent, bioaccumulative, toxic, and carcinogenic chemical compound that is suspected of causing adverse human health effects. The discharge of the microorganisms from the firemain system also could result in the introduction of ANS and negatively impact biodiversity, water quality, and the designated uses of water bodies. In addition, AFFF could potentially cause foam to float on the surface of the water, altering visibility and violating aesthetic water quality criteria.

Restricting the discharge of AFFF and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that AFFF (i.e., AFFF used during training, testing, or maintenance operations) shall not be discharged (i.e., AFFF should be collected and stored for on shore disposal or discharged when the vessel is located seaward of waters subject to UNDS) because the constituents have the potential to contribute to an exceedance of water quality criteria and to cause adverse environmental and human health impacts.

B. Chain Locker Effluent

1. Nature of the Discharge

Chain locker effluent is the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain (40 CFR 1700.4(c)). Anchor chains used by surface vessels are stored in the chain locker when not in use. The small amount of water that is washed into the chain locker eventually drains through the bottom grating and into the sump where it can come into contact with paint chips, rust, grease, and sacrificial zinc anodes. This collected water also has the potential to contain ANS.

Chain locker effluent is discharged when the chain locker sump is emptied directly overboard. The generation rate of this discharge depends on many factors, including the amount of precipitation and seawater that enters the chain locker, the size of the vessel, the number of chain lockers per vessel, and the frequency of anchor use. Approximately 500 vessels of the Armed Forces have at least one chain locker, and thus generate chain locker effluent. However,

inspections of the chain lockers during Phase I revealed that the chain lockers are often dry and only a small amount of water actually accumulates in the chain locker. Submarine chain lockers are always submerged, open to the sea, and do not collect effluent. Vessels less than 79 feet in length are not expected to have chain lockers.

For more information regarding chain locker effluent, please see the chain locker effluent NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Chain locker effluent could negatively impact receiving waters due to the possible presence of paint chips, rust, grease, sacrificial zinc anodes, and microorganisms. The discharge of the microorganisms could result in the introduction of ANS and negatively impact biodiversity, water quality, and the designated uses of water bodies. Restricting the discharge of chain locker effluent and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that all anchor chains from surface vessels (submarines are not subject to this requirement) must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as they are being hauled out of the water to remove sediment and organisms. EPA and DoD also propose to require that all chain lockers must be cleaned periodically to eliminate accumulated sediments and any potential accompanying pollutants. The dates of all chain locker inspections must be recorded in the ship's log or other vessel recordkeeping documentation.

In addition, EPA and DoD propose to require that for vessels that sail seaward of waters subject to UNDS at least once per month, chain lockers shall not be rinsed or pumped out within waters subject to UNDS to eliminate any potential impact to nearshore waters. If technically feasible, the chain locker shall be periodically cleaned, rinsed, and/or the accumulated water and sediment (i.e., chain locker effluent) shall be pumped out prior to entering waters subject to UNDS (preferably in mid-ocean). For vessels that do not sail seaward of waters subject to UNDS at least once per month, if a discharge of chain locker effluent occurs within waters subject to UNDS it shall occur at the greatest distance practicable from shore and, if technically feasible, shall not be discharged in federally-protected waters.

C. Distillation and Reverse Osmosis Brine

1. Nature of the Discharge

Distillation and reverse osmosis brine is the concentrated seawater (brine) produced as a by-product of the processes used to generate freshwater from seawater (40 CFR 1700.4(i)). Distillation and reverse osmosis brine derives from distilling and reverse osmosis equipment and machinery that generate freshwater from seawater for a variety of shipboard applications, including potable water for drinking, aircraft and vehicle washdowns, boiler feedwater on steam-powered vessels, and auxiliary boiler feedwater on most vessels.

The brine from distillation and reverse osmosis differs based on whether the brine originates from distilling equipment or reverse osmosis equipment. Distillation equipment boils seawater and the resulting steam is condensed into high-purity distilled water; the remaining seawater concentrate (i.e., brine) that is not evaporated is discharged overboard. Reverse osmosis equipment separates freshwater from seawater by using semi-permeable membranes as a physical barrier to allow a portion of the seawater to pass through the membrane as freshwater;

the retained substances become concentrated into brine that includes a large percentage of suspended and dissolved constituents and is subsequently discharged overboard. This seawater concentrate, or brine, primarily consists of seawater, but can also contain materials from these processes, such as nutrients and anti-scaling treatment chemicals as well as some metals, including copper and zinc.

Approximately 10 % of U.S. Navy, MSC, U.S. Coast Guard, and U.S. Army surface vessels and submarines are equipped with water purification equipment and therefore generate this discharge. The majority of the 10 % are operating distillation equipment. Vessels less than 79 feet in length are not expected to have water purification equipment.

For more information regarding distillation and reverse osmosis brine, please see the distillation and reverse osmosis brine NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Distillation and reverse osmosis brine could negatively impact receiving waters due to the presence of dissolved and suspended solids, anti-scaling chemicals, and metals. The constituents found in the brine are generally present in the influent seawater used in the distillation or reverse osmosis processes and become concentrated in the brine before being discharged. Specifically, the concentration of copper and zinc found in the brine discharges could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of distillation and reverse osmosis and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the discharge of the distillation and reverse osmosis brine overboard within waters subject to UNDS if it comes in contact with machinery or industrial equipment (other than distillation or reverse osmosis machinery), toxic or hazardous materials, or wastes.

D. Elevator Pit Effluent

1. Nature of the Discharge

Elevator pit effluent is the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels (40 CFR 1700.4(j)). Most large surface vessels have at least one type of elevator. Shipboard elevators operate using cables, rails, or hydraulic pistons. Elevator shafts typically have a sump or reservoir in the pit that collects liquids that may enter the elevator and shaft area. If the elevator pit is located above the waterline, the sump is typically fitted with a drain that directs the waste overboard. This drain is normally higher than the sump floor to prevent clogging from solids that otherwise settle out and remain in the sump. If the elevator pit is located below the waterline, the pit is educted dry using the pressure of the firemain water supply to remove fluids from the sump.

Elevator pit effluent may contain grease, lubricants, solvents, soot, dirt, paint chips, or nutrients. Furthermore, when water enters the elevator pit, it sometimes contains materials that were on the deck, including aviation fuel, hydraulic fluid, lubricating oil, residual water, and AFFF. Residue in the elevator car from the transport of materials may also be washed into the elevator pit. The cleaning solvent used during maintenance cleaning operations as well as liquid

wastes generated by the cleaning process then drain into the elevator pit sump. This mixture of materials and liquid collects in the sump at the bottom of the elevator pit. If the firemain system is used to educt fluids from the pit, the effluent may also contain nitrogen, bis(2-ethylhexyl) phthalate, copper, iron, and nickel.

The generation rate of this discharge depends on the periodicity of cleaning and lubrication of the mechanical components (e.g., guide rollers and bearings) on the elevator car and in the elevator shaft and pit, the frequency and volume of water from the deck that enters the elevator pit, and the frequency of elevator use (frequent use allows for more deck runoff entry). These factors vary greatly among vessel classes and between elevators aboard any given vessel. Vessel inspections conducted during UNDS Phase I, however, revealed that elevator pits were often dry.

Approximately 5 % of surface vessels, all of them belonging to the U.S. Navy and MSC, generate elevator pit effluent. The U.S. Coast Guard, U.S. Army, U.S Air Force, and U.S. Marine Corps vessels do not produce elevator pit effluent because their vessels do not have elevators.

For more information regarding elevator pit effluent, please see the elevator pit effluent NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Elevator pit effluent could negatively impact receiving waters due to the possible presence of lubricants, cleaning solvents, soot, paint chips, and constituents of concern (total nitrogen, bis(2-ethylhexyl) phthalate, silver, chromium, copper, iron, nickel, lead, zinc, and phenols). These constituents may be present in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of

elevator pit effluent and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the direct discharge of elevator pit effluent overboard within waters subject to UNDS to minimize the potential impact to nearshore waters. Elevator pit effluent could be discharged within waters subject to UNDS but only if it is commingled with another discharge for the purposes of treatment prior to discharge; under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., International Organization for Standardization (ISO) Method 9377) or U.S. Coast Guard, or are otherwise harmful to the public health or welfare of the United States.

E. Gas Turbine Water Wash

1. Nature of the Discharge

Gas turbine water wash is the water released from washing gas turbine components (40 CFR 1700.4(l)). Gas turbines are used for propulsion and electricity generation and are cleaned occasionally to remove byproducts that accumulate and affect their operation. Expected constituents of gas turbine water wash include synthetic lubricating oil, grease, solvent-based

cleaning products that contain naphthalene, hydrocarbon combustion by-products, salts from the marine environment, and metals leached from metallic turbine surfaces. Gas turbine water wash effluent and any drainage of residual material from leaks and spills usually are either collected and held in a dedicated tank system for shore disposal or discharged to the environment as a commingled component of another UNDS discharge.

The discharge rates and concentrations of gas turbine water wash vary according to the frequency of washdowns. Some U.S. Navy vessels conduct gas turbine washdowns as frequently as every 48 hours with over 100 gallons of water wash generated per washdown.

Fewer than 5 % of the surface vessels (i.e., surface combatants and auxiliary support ships) of the Armed Forces have shipboard gas turbine systems and therefore generate gas turbine water wash. Vessels less than 79 feet in length are not expected to have gas turbines.

For more information regarding gas turbine water wash, please see the gas turbine water wash NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Gas turbine water wash could negatively impact receiving waters due to the possible presence of oil, grease, and solvent-based cleaning products that contain naphthalene. The estimated concentration of naphthalene could potentially contribute to an exceedance of relevant recommended water quality criteria, and the concentration of oil also could potentially contribute to an exceedance of relevant recommended water quality criteria because the source of this discharge (gas turbine cleaning) is designed to dissolve fuel, lubricant, and other hydrocarbon deposits. Restricting the discharge of gas turbine water wash and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the direct discharge of gas turbine water wash overboard within waters subject to UNDS. Gas turbine water wash should be collected separately and disposed of at an onshore facility. If gas turbine water wash is commingled with any other discharge for the purposes of treatment prior to discharge, then under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or are otherwise harmful to the public health or welfare of the United States.

F. Non-Oily Machinery Wastewater

1. Nature of the Discharge

Non-oily machinery wastewater discharge is the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers (40 CFR 1700.4(p)). Non-oily machinery wastewater systems are designed to separate the wastewater generated from machinery that does not contain oil from the wastewater generated from machinery that has oil content. Vessels have numerous sources of non-oily machinery wastewater, including distilling plants start-up discharge, chilled water condensate drains, fresh and saltwater pump drains, potable water tank overflows, and leaks from propulsion shaft seals.

Non-oily machinery wastewater discharge can contain a suite of conventional pollutants, metals, and organics (e.g., copper, nickel, silver, zinc, mercury, and a variety of nutrients). Normally, the discharge is drained directly overboard continuously as it is produced or is pumped overboard intermittently from non-oily machinery wastewater tanks. In some instances, non-oily machinery wastewater may be drained to the bilge.

Non-oily machinery wastewater discharge rates vary by vessel size and operation type, ranging from less than 100 gallons per hour (gph) to over 4,000 gph.

Approximately 4 % of the vessels of the Armed Forces have dedicated non-oily machinery wastewater collection systems. Most of the vessels that generate this discharge are U.S. Navy vessels greater than or equal to 79 feet in length. Vessels less than 79 feet in length are not expected to generate this discharge.

For more information regarding non-oily machinery wastewater, please see the non-oily machinery wastewater NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Non-oily machinery wastewater discharges could negatively impact receiving waters due to the possible presence of metals and other toxic pollutants. The constituents of concern (bis(2-ethylhexyl) phthalate, copper, nickel, and silver) are sometimes present in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of non-oily machinery wastewater and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to require that direct discharges of non-oily machinery wastewater or discharges of non-oily machinery wastewater that are commingled with any other discharge for the purposes of treatment prior to discharge be free from any additives that are toxic or bioaccumulative in nature. In addition, under no circumstances may oils, including oily mixtures contained in non-oily machinery wastewater be discharged in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or otherwise are harmful to the public health or welfare of the United States.

G. Photographic Laboratory Drains

1. Nature of the Discharge

The photographic laboratory (“photo lab”) drains contain laboratory wastewater resulting from the processing of photographic film (40 CFR 1700.4(q)). The wastewater resulting from a photographic laboratory aboard a vessel is the same as the wastewater that would result from a shore-based photographic developing facility. The wastewater results from the processing of color, black-and white, and X-ray film. The photographic wastewater processing system consists of three elements: a film processor, a washwater recycle system, and a fixer recycle and silver recovery subsystem. These three elements contribute to wastewater that includes developer

solutions, fixers, hardener solutions, detergents, rinse-waters, and wastewater from silver recovery units.

Major constituents in the discharge can include acetic acid, aluminum sulfate, ammonia, boric acid, ethylene glycol, sulfuric acid, sodium acetate, sodium chloride, ammonium bromide, formaldehyde, and silver. These constituents also vary based on whether the photos use color, black-and-white or X-ray film.

Only U.S. Navy aircraft carriers, which represent fewer than 1 % of vessels of the Armed Forces, are likely to produce photographic laboratory wastewater, if at all. The widespread use of digital photography has nearly eliminated the use of wet film processing and DoD expects that photographic laboratory wastewater generation onboard vessels will be almost entirely eliminated over time.

For more information regarding photographic laboratory wastewater, please see the photographic laboratory lab drains NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Photo lab drain discharges could negatively impact receiving waters due to the possible presence of metals and other toxic pollutants. Specifically, concentrations of silver could potentially contribute to an exceedance of relevant recommended water quality criteria. The use of digital photography, however, has almost completely eliminated the use of wet film processing and ultimately the waste water produced by photo labs. Restricting the discharge of photo lab drain discharges and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose to prohibit the discharge of photographic laboratory drain discharges within waters subject to UNDS.

H. Seawater Cooling Overboard Discharge

1. Nature of the Discharge

Seawater cooling overboard discharge is the discharge of seawater from a dedicated piping system that provides non-contact cooling water for other vessel systems (40 CFR 1700.4(r)). The seawater cooling system continuously provides cooling water to heat exchangers, removing heat from main propulsion machinery, electrical generating plants, and other auxiliary equipment. The cooling water is typically circulated through an enclosed system that does not come in direct contact with machinery, but still may contain sediment from water intake, traces of hydraulic or lubricating oils, and trace metals leached or eroded from the pipes within the system. In addition, because the discharge is used for cooling, the effluent will have an increased temperature.

The discharge sometimes contains entrained or dissolved materials, sediment, and biota because seawater cooling water may come in contact with sea chests and hull connections. Sea chests and hull connections are equipped with sea strainer plates to prevent debris from entering the seawater cooling system (especially when in port or in coastal waters) and may accumulate sediment and biota from the seawater during this process.

The generation rate of this discharge varies depending on many factors, including the type of vessel, equipment aboard, and vessel operating schedules (number of transits and days in port per year). Rates can vary from several gallons per minute (gpm) for smaller, diesel-powered

ships to flows of greater than 170,000 gpm for aircraft carriers during full-power steaming.

While transiting near port areas, vessels tend to operate their propulsion plants at low levels that are sufficient to maintain steering control and that do not require the maximum amount of seawater cooling. While anchored or pier-side, seawater cooling flow rates are at their lowest because only certain auxiliary equipment is required.

All vessels of the Armed Forces (with the exception of some non-self propelled service craft such as barges) use seawater for cooling. The majority of the volume of seawater cooling overboard discharge, however, is generated by approximately 10 % of the vessel population (i.e., vessels greater than or equal to 79 feet in length).

For more information regarding seawater cooling, please see the seawater cooling overboard discharge NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Seawater cooling overboard discharges could negatively impact receiving waters due to the possible presence of metals, biota, and increased temperature. The constituents of concern include nitrogen, copper, iron, aluminum, zinc, nickel, tin, silver, titanium, arsenic, manganese, chromium, lead, and possibly oil and grease from valves and pumps. The nitrogen, copper, nickel, and silver could potentially contribute to an exceedance of relevant recommended water quality criteria. The potential also exists for the transport of ANS because the blowdown procedure for the strainer plates may dislodge biota that has grown on the plate over time. However, this may be mitigated by seawater piping biofouling prevention systems that reduce the discharge of potential ANS. Lastly, the temperature of the discharge could potentially contribute to an exceedance of relevant recommended water quality criteria for thermal mixing

zones while in port. Restricting the discharge of seawater cooling and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B).

EPA and DoD propose to require a performance standard that restricts the occurrence of the discharge. Specifically, the discharge should occur only when the vessel is underway. Discharges that occur when the vessel is underway ensure dispersion of any adverse thermal impacts. In addition, the standard would provide for the reduction in production and discharge of seawater cooling overboard by urging the use of shore power in port if: (1) shore power is readily available; (2) shore-based power supply systems are capable of providing the needed electricity; and (3) the vessel is equipped to connect to shore-based power. Certain discharges of cooling water associated with critical ship function (e.g., air conditioning system) cannot be eliminated by connecting to shore power and are expected to occur when the vessel is in port. Specifically, EPA and DoD propose to require that, for vessels that are greater than or equal to 79 feet in length, fouling organisms be removed from seawater piping on a regular basis and the discharge of such removed organisms would be prohibited within waters subject to UNDS. For vessels that are less than 79 feet in length, maintenance of all piping and seawater cooling systems would need to meet the requirements of 40 CFR 1700.32 (Seawater Piping Biofouling Prevention) and fouling organisms removed from seawater piping could not be discharged within waters subject to UNDS. Submarines have suction clearing procedures, which must be performed for vessel safety purposes; therefore, these operational procedures to remove fouling organisms are not subject to these requirements.

I. Seawater Piping Biofouling Prevention

1. Nature of the Discharge

Seawater piping biofouling prevention is defined as the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels (40 CFR 1700.4(s)). Biofouling prevention is accomplished on certain vessels with on-board chlorinators that inject low concentrations of sodium hypochlorite, a chlorine solution, at or near seawater cooling system intakes. Seawater piping biofouling prevention can occur through several technologies. Some vessels prevent biofouling with electrolytic chlorinators that use naturally occurring dissolved chloride to generate chlorine. The resultant free chlorine and reaction products from saltwater are collectively called “chlorine produced oxidants” or CPO.

Discharges from seawater biofouling treatment systems are continuous for as long as seawater cooling systems are in operation. The seawater is pumped through heat exchangers where the seawater absorbs heat and is then discharged overboard. The anti-biofouling systems are designed to prevent organisms from attaching to any part of seawater systems, resulting in the discharge of such organisms directly overboard in the same geographical area in which they are pulled into the system.

The generation rate of this discharge varies depending on many factors, including the propulsion plant operating conditions and the system cooling requirements. There is a greater demand for cooling water when a vessel is underway because the propulsion plant is operating.

Seawater biofouling prevention equipment is installed on U.S. Navy aircraft carriers, submarines, some MSC vessels, most surface combatants, newer amphibious support ships,

many larger auxiliary ships, and some patrol ships, all of which represent fewer than 5 % of the vessels of the Armed Forces.

For more information regarding seawater piping biofouling, please see the seawater piping biofouling prevention NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Seawater piping biofouling prevention discharges could negatively impact receiving waters due to the possible presence of chlorinated substances. For chlorinator biofouling prevention systems, chlorine is discharged in concentrations that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of seawater piping biofouling prevention and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose a performance standard for seawater piping biofouling prevention that minimizes the amount of biofouling chemicals (e.g., chlorine) used to keep fouling under control. In addition, fouling organisms would need to be removed via a cleaning event from seawater piping on a regular basis to minimize the impact to the receiving waters. Fouling organisms removed during a cleaning event would be prohibited from being discharged within waters subject to UNDS to prevent the spread of ANS. This prohibition would not apply to the discharge of organisms resulting from the routine chemical biofouling control system nor would it apply to submarines. Lastly, this performance standard would require practices

consistent with FIFRA registration requirements for seawater piping biofouling chemicals and would prohibit discharges within waters subject to UNDS of pesticides or chemicals banned for use in the United States.

J. Small Boat Engine Wet Exhaust

1. Nature of the Discharge

Small boat engine wet exhaust (SBEWE) is the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine (40 CFR 1700.4(t)). SBEWE occurs on vessels that are less than 79 feet in length. Small boat engines commonly use seawater to both cool and quiet their exhaust. Seawater passes through the heat exchanger, gear oil cooler, and aftercooler (if equipped), and is then injected into the exhaust. When injected, some of the gaseous and solid components of the exhaust transfer into the cooling water; the cooling water then discharges into the receiving water. Thus, the cooling process can result in the accumulation of the following constituents: oxides of nitrogen, sulfur dioxide, organic compounds (including hydrocarbons), carbon monoxide, and particulates.

SBEWE discharge includes constituents from the engine exhaust that are transferred to the injected seawater and discharged overboard. The constituents discharged by outboard engines differ from those discharged by inboard engines due to the different fuel and engine types. Inboard engines usually discharge wet exhaust above the waterline. Outboard engines generally discharge wet exhaust underwater through the propeller hub. For naval vessels, EPA and DoD estimate that outboard engines discharge wet exhaust at a rate of 20 gpm while inboard diesel engines discharge at a rate of 150 gpm.

Approximately all of the vessels of the Armed Forces less than 79 feet in length (5,144) operate with engines that generate this discharge.

For more information regarding SBEWE, please see the SBEWE NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

SBEWE could negatively impact receiving waters due to the possible presence of nitrogen oxides, sulfur dioxide, carbon monoxide, hydrocarbons, and other organic compounds and particulates. Specifically, benzene, toluene, ethylbenzene, and naphthalene concentrations in two-stroke outboard engines could potentially contribute to an exceedance of relevant recommended water quality criteria. Benzene and ethylbenzene concentrations in four-stroke outboard engine wet exhaust, and total polycyclic aromatic hydrocarbons in inboard engine wet exhaust also could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of SBEWE and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B). EPA and DoD propose that alternative fuels be used to reduce the concentration of pollutants in the discharges from SBEWE. In addition, the performance standard would indicate that, for vessels generating wet exhaust, four-stroke engines should be considered instead of two-stroke engines. Vessels using two-stroke engines would be required to use environmentally acceptable lubricants (found in the proposed definition for this term at 40 CFR 1700.3) unless such use would be technologically infeasible. Additionally, the standard would urge that low sulfur alternative fuels should be used to reduce the concentration of pollutants in discharges from small boat engine wet exhaust.

K. Welldeck Discharges

1. Nature of the Discharge

Welldeck discharges are defined as the water that accumulates from seawater flooding of the docking well (welldeck) of an amphibious support ship used to transport, load, and unload amphibious vehicles, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck (40 CFR 1700.4(y)). The welldeck is a floodable platform used for launching or loading small satellite amphibious vehicles, landing crafts, and cargo. Welldeck discharges may include the following: (1) washout when the ship ballasts to embark or disembark landing craft; (2) water or detergent and water mixture used for air-cushion landing craft gas turbine engine washes; (3) graywater and condensate that can be discharged from the utility landing craft; (4) freshwater wash to remove salt and dirt from vehicles, equipment, and landing craft; and (5) U.S. Department of Agriculture washes for the welldeck, vehicle storage areas, and all vehicles, equipment, and landing craft during overseas operations. The constituents expected in welldeck discharges include freshwater, distilled water, firemain water, graywater, air-conditioning condensate, sea-salt residues, paint chips, wood splinters, dirt, sand, organic debris, oil, grease, fuel, detergents, combustion by-products, and lumber treatment chemicals.

Depending on the specific activities conducted, welldeck discharges may contain a variety of residual constituents, including oil and grease, ethylene glycol (antifreeze), chlorine, detergents/cleaners, metals, solvents, ANS, and sea-salt residues. Effluent is discharged to the environment by washout or surge when landing craft are operating in the welldeck or when washdowns occur. Effluent from the various washes performed on the welldeck is either discharged as it drains overboard from the welldeck or is pumped overboard by an eductor, a

vacuum-like device. The volume of the welldeck effluent varies depending on the type of landing craft to be loaded or unloaded.

Only U.S. Navy amphibious support ships with welldecks, which represent fewer than 1 % of the vessels of the Armed Forces, produce this discharge.

For more information regarding welldeck discharges, please see the welldeck discharges NOD in Appendix A of the Technical Development Document – EPA 821-R-99-001.

2. Environmental Effects

Welldeck discharges could negatively impact receiving waters due to the presence of oil and grease. These discharges have the potential to cause adverse environmental effects because oil drippings spilled during vehicle and equipment maintenance could leave an oil film on the deck surface. The oil has the potential to be discharged overboard when the welldeck becomes flooded and could possibly create an oil sheen that could potentially contribute to an exceedance of relevant recommended water quality criteria. Restricting the discharge of welldeck discharges and the associated constituents of concern would protect and enhance the quality of waters subject to UNDS.

3. Selection of Marine Pollution Control Device Performance Standard

In selecting the proposed standard, EPA and DoD considered the information from Phase I of UNDS, the VGP effluent limitations, and the seven statutory factors listed in CWA § 312(n)(2)(B).

EPA and DoD propose to prohibit welldeck discharges containing graywater within waters subject to UNDS and would prohibit the washdown of gas turbine engines within three nautical miles of the United States to minimize the impact of oil and grease on nearshore waters. Welldeck discharges from equipment and vehicle washdowns would need to be free from

garbage, and could not contain oil in quantities that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, or contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard, or otherwise are harmful to the public health or welfare of the United States.

IV. Additional Information of the Proposed Rule

This section provides an overview of the additional amendments proposed for 40 CFR part 1700. These proposed changes include an amendment to subsections referenced Effect (§ 1700.2), a provision that would authorize certain discharges notwithstanding the proposed performance standards in situations where vessel safety or lives are endangered (§ 1700.39), a provision that would require combined discharge streams to meet the requirements applicable to all discharge streams that are combined (§ 1700.40), a proposed requirement for recordkeeping (§ 1700.41), and a proposed requirement to report instances of non-compliance with MPCD performance standards (§ 1700.42).

1. Amendment to subsections referenced in § 1700.2 Effect

EPA and DoD are proposing to amend the reference sections noted in the Effect Section 1700.2 (a) by amending “Federal standards of performance for each required Marine Pollution Control Device are listed in § 1700.14” to “Federal standards of performance for each required Marine Pollution Control Device are listed in §§ 1700.14 through 1700.38. Federal standards of performance apply to all vessels, whether existing or new, and regardless of vessel class, type, or size, unless otherwise expressly provided in §§ 1700.14 through 1700.38.”

2. Reservation of Sections

As noted previously, EPA and DoD are proposing the Phase II standards in two batches. For the purpose of proposing the second batch, the proposal reserves the following sections for those future rulemaking actions:

Section 1700.15 Catapult Water Brake Tank & Post-Launch Retraction Exhaust;

Section 1700.17 Clean Ballast;

Section 1700.18 Compensated Fuel Ballast;

Section 1700.19 Controllable Pitch Propeller Hydraulic Fluid;

Section 1700.20 Deck Runoff;

Section 1700.21 Dirty Ballast;

Section 1700.24 Firemain Systems;

Section 1700.26 Graywater;

Section 1700.27 Hull Coating Leachate;

Section 1700.28 Motor Gasoline and Compensating Discharge;

Section 1700.34 Sonar Dome Discharge;

Section 1700.35 Submarine Bilgewater;

Section 1700.36 Surface Vessel Bilgewater/Oil-Water Separator Effluent (OWSE); and

Section 1700.37 Underwater Ship Husbandry.

3. Section 1700.39 Exceptions

EPA and DoD propose to add an “Exceptions” subsection at §1700.39, which would provide a place to identify certain excluded discharges from the scope of UNDS notwithstanding the proposed performance standards in situations where vessel safety or lives are endangered.

The section also would identify requirements for maintaining records of all discharge exceptions.

4. Section 1700.40 Commingling of Discharges

EPA and DoD propose to add a “Commingling of Discharges” subsection at §1700.40. By adding this subsection, EPA and DoD propose that if two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge.

5. Section 1700.41 Records

EPA and DoD propose to add a “Records” subsection at §1700.41. By adding this subsection, EPA and DoD propose recordkeeping requirements that shall document all inspections, instances of non-compliance, and instances of an exception.

6. Section 1700.42 Non-Compliance Reports

EPA and DoD propose to add a “Non-Compliance Reports” subsection at §1700.42. By adding this subsection, EPA and DoD propose reporting requirements for any non-compliance with performance standards prescribed for this Part.

V. Related Acts of Congress and Executive Orders

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as EPA and DoD have determined that Phase II of UNDS does not create any additional collections of information beyond those already mandated under the existing Phase I of UNDS. The Office of Management

and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 1700) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040-0187. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule has no direct effects on small entities as it only applies to discharges from a vessel of the Armed Forces. Small entities do not own or operate vessels of the Armed Forces. Hence, after considering the economic impacts of the proposed rule on small entities, EPA and DoD certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. The action implements mandates specifically and explicitly set forth by the Congress in UNDS. The proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any of these entities. Therefore, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA and DoD have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

In developing the proposed rule, EPA consulted with small governments under a plan developed pursuant to section 203 of UMRA concerning the regulatory requirements in the proposed rule that might significantly or uniquely affect small governments. EPA and DoD notified potentially affected small governments of those requirements; enabled officials of affected small governments to have meaningful and timely input into the development of regulatory proposals with any significant Federal intergovernmental mandates; and informed, educated, and advised small governments on compliance with the regulatory requirements. For more information on the consultations conducted with state and local or tribal governments, consult the sections below regarding Executive Order 13132 and Executive Order 13175, respectively.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires Federal agencies to develop an accountable process to ensure “meaningful and timely input by

state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, Federal agencies may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA and DoD concluded that the proposed rule, once finalized in Phase III, will have federalism implications. Once the proposed national discharge performance standards are promulgated in Phase III by DoD, adoption and enforcement of new or existing state or local regulations for the discharges will be preempted. Accordingly, EPA and DoD provide the following federalism summary impact statement as required by section 6(c) of Executive Order 13132.

During Phase I of UNDS, EPA and DoD conducted two rounds of consultation meetings (i.e., outreach briefings) to allow states to have meaningful and timely input into the development of the rulemaking. Twenty-two states accepted the offer to be briefed on UNDS and discuss state concerns. EPA and DoD provided clarification on the technical aspects of the UNDS process, including preliminary discharge determinations and analytical information supporting decisions to control or not control discharges. State representatives were provided with discharge summaries containing the description, analysis, and preliminary determination of each of the 39 discharges from vessels of the Armed Forces—25 of which were determined to require control.

During Phase II, EPA and DoD consulted again with state representatives early in the process of developing the proposed regulation. On March 14, 2013, EPA held a Federalism consultation in Washington, DC, and invited representatives from states and political subdivisions of states in order to obtain meaningful and timely input in the development of the proposed discharge standards. EPA and DoD informed the state representatives that the two agencies planned to use the VGP effluent limitations as a baseline for developing the proposed performance standards for the 25 UNDS discharges identified in Phase I as requiring control.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires Federal agencies to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The UNDS rulemaking will not impact vessels operated by tribes because the rule only regulates discharges from vessels of the Armed Forces. However, tribes may be interested in this action because vessels of the Armed Forces, including U.S. Coast Guard vessels, may operate in or near tribal waters. EPA hosted a National Teleconference on March, 26, 2013, in order to obtain meaningful and timely input during the development of the proposed discharge standards. EPA and DoD informed the representatives that the two agencies planned to use the VGP effluent limitations as a baseline for developing the performance standards for the 25 UNDS discharges identified in Phase I as requiring control.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that is determined to

be “economically significant” as defined under Executive Order 12866, and concerns an environmental health or safety risk that EPA and DoD have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA and DoD must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA and DoD.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA and DoD do not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The 11 proposed discharge standards are designed to control discharges incidental to the normal operation of a vessel of the Armed Forces that could adversely affect human health and the environment. The standards will reduce the impacts to the receiving waters and any person using the receiving waters, regardless of age. For these reasons, EPA and DoD do not have reason to believe that the proposed rule will present a disproportionate risk to children.

H. Executive Order 13211: Actions that Concern Regulations that Significantly Affect Energy Supply, Distribution, and Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because the proposed rule is not likely to have any adverse energy effects because it only applies to discharges incidental to the normal operation of a vessel of the Armed Forces. The 11 discharges from a vessel of the Armed Forces do not affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Pub. L. 104-113, 12(d) (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. When available and potentially applicable voluntary consensus standards are not used by EPA or DoD, NTTAA requires EPA and DoD to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The proposed rule involves performance standards for certain discharges from a vessel of the Armed Forces. EPA and DoD performed a search to identify potentially applicable voluntary consensus standards. EPA and DoD determined that the ISO Method 9377– determination of hydrocarbon oil index - is a voluntary consensus standard and is being used as part of the proposed UNDS performance standards.

J. Executive Order 13112: Invasive Species

Executive Order 13112, entitled “Invasive Species” (64 FR 6183, February 8, 1999), requires each Federal agency, whose actions may affect the status of invasive species, identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As defined by this Executive Order, “invasive species” means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

As part of the environmental effects analyses, EPA and DoD considered the control of invasive species when developing the proposed discharge performance standards for all 11

discharges (See Section II). Therefore, the proposed discharge standards will help prevent or control the introduction of invasive species into federally-protected waters and waters subject to UNDS.

K. Executive Order 13089: Coral Reef Protection

Executive Order 13089, entitled “Coral Reef Protection” (63 FR 32701, June 16, 1998), requires all Federal agencies to identify actions that may affect U.S. coral reef ecosystems; utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and to the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems. The proposed discharge standards are designed to control or eliminate the discharges incidental to the normal operation of a vessel of the Armed Forces, ultimately minimizing the potential for causing adverse impacts to the marine environment including coral reefs.

L. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February, 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The proposed discharge performance standards would only apply to a vessel of the Armed Forces and would ultimately increase environmental protection; therefore, EPA and DoD

determined that the proposed discharge performance standards would not disproportionately and adversely affect minority or low-income populations.

VI. Appendix A - Description of Vessels of the Armed Forces

Table A-1

Vessel Type	Total Vessels of the Armed Forces			
	Large Vessels (Greater than or equal to 79 feet)		Small Vessels (Less than 79 feet)	
	Count	% of Vessels	Count	% of Vessels
Aircraft Carriers	11	1 %		
Amphibious Support Ships	37	3 %		
Auxiliary Ships	368	32 %		
Boats			5,132	100 %
Patrol Ships	203	17 %		
Service Craft	355	31 %	12	< 1 %
Submarines	72	6 %		
Surface Combatants	115	10 %		
Total	1,161	100 %	5,144	100 %

Table A-1 provides information regarding the composition of vessels of the Armed Forces by vessel type and vessel size.

Aircraft Carriers: These are the largest vessels of the Armed Forces. They are designed primarily for conducting combat operations by fixed wing aircraft that are launched with catapults. Nuclear energy powers all vessels in this group. Aircraft carriers exceed 1,000 feet in length, and have crews of 4,000 to 6,000. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Amphibious Support Ships: These are large vessels, ranging in length from 569 feet to 847 feet, designed to support amphibious assault operations. Many of these vessels have large clean ballast tanks used to lower and raise the hull during amphibious operations, and welldecks to

support the recovery of landing crafts and amphibious vehicles. These large ocean-going vessels may operate within waters subject to UNDS during training and testing of equipment.

Auxiliary Ships: This is a large and diverse group of self-propelled vessels with lengths equal to or greater than 79 feet and designed to provide general support to either combatant forces or shore-based establishments. These ships fulfill multiple duties including but not limited to transporting supplies (e.g., fuel, ammunitions) and troops to and from the theater of operations, executing mine countermeasures operations, conducting research, maintaining navigations systems (e.g., buoys), and recovering targets and drones. This vessel class has crew sizes ranging from 10 to 200 people. Depending on mission and operation requirements, these vessels operate both within and seaward of waters subject to UNDS.

Boats: This type of vessel encompasses 81 % of the vessels of the Armed Forces and includes all self-propelled vessels less than 79 feet in length. These vessels are used for such roles as security, combat operations, rescue, and training. Because of their relative small size, these vessels have small crews that range from 1 to 19, and produce limited sources of liquid discharges. These vessels operate predominantly within waters subject to UNDS, but may operate seaward of waters subject to UNDS when deployed from larger ships.

Patrol Ships: These are self-propelled vessels with lengths equal to or greater than 79 feet, and are designed to conduct patrol duties (i.e., maritime homeland security, law enforcement, and national defense missions). Vessels in this group have crew sizes ranging from 10 to 200. Some vessels in this group may operate seaward of waters subject to UNDS, but the majority predominantly operates within waters subject to UNDS conducting security patrol missions.

Service Craft: This is a diverse group of non-self-propelled vessel classes designed to provide general support to other vessels in the Armed Forces fleet or shore-based establishments. Vessel

classes in this group have an average length of 155 feet with more than 95 % of them being between 40 feet and 310 feet. While most of these vessels have a very limited crew or no crew, barracks craft can provide sleeping accommodations for 100 to 1,200 crew members. These vessels include multiple barges and lighter designs, dredges, floating dry docks, floating cranes, floating causeway ferries, floating roll-on-off discharge facilities, dry deck shelters, floating workshops, and floating barracks. These vessels operate predominantly within waters subject to UNDS.

Submarines: These submersible combat vessels powered with nuclear energy can fulfill combatant, auxiliary, or research and development roles. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Surface Combatants: These are surface ships designed primarily to engage in attacks against airborne, surface, sub-surface, and shore targets. Vessel classes in this group range in length from 378 feet to 567 feet, and have crew sizes that range from 40 for the Littoral Combat Ship to under 400 for a Guided Missile Destroyer or Cruiser. Except during transit in and out of port, these vessels operate predominantly seaward of waters subject to UNDS.

Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II
Page 59 of 73

List of Subjects in 40 CFR Part 1700

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

Dated: December 20, 2013.

Gina McCarthy,
Administrator, Environmental Protection Agency.

Dated: January 15, 2014.

Dennis McGinn,
Assistant Secretary of the Navy,
Energy, Installations & Environment.

For the reasons stated in the preamble, title 40, chapter VII, of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for 40 CFR part 1700 continues to read as follows:

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

Subpart A — Scope

2. Amend § 1700.2 by revising paragraph (a) to read as follows:

§ 1700.2 Effect.

(a) This part identifies those discharges, other than sewage, incidental to the normal operation of Armed Forces vessels that require control within the navigable waters of the United States and the waters of the contiguous zone, and those discharges that do not require control. Discharges requiring control are identified in § 1700.4. Discharges not requiring control are identified in § 1700.5. Federal standards of performance for each required Marine Pollution Control Device are listed in §§ 1700.14 through 1700.38. Federal standards of performance apply to all vessels, whether existing or new, and regardless of vessel class, type, or size, unless otherwise expressly provided in §§ 1700.14 through 1700.38.

* * * * *

3. Section 1700.3 is amended by adding in alphabetical order definitions for "Bioaccumulative," "Biodegradable," "Environmentally acceptable lubricants," "Federally-protected waters," "Hazardous material," "Non-toxic," "Person in charge," "Toxic materials," and "Waters subject to UNDS" to read as follows:

§ 1700.3 Definitions.

* * * * *

Bioaccumulative means the partition coefficients in the marine environment are $\log K_{ow} > 3$ using test Methods OECD 117 and 107.

Biodegradable means:

(1) Regarding cleaning products and environmentally acceptable lubricants, "biodegradable" means the compound or mixture in question that is subject either to the removal of at least 70 percent of dissolved organic carbon, production of at least 60 percent of the theoretical carbon dioxide, or consumption of at least 60 percent of the theoretical oxygen demand within 28 days. Acceptable test methods include: Organization for Economic Co-operation and Development

Test Guidelines 301 A-F, 306, and 310, and International Organization for Standardization 14593:1999.

(2) Regarding biocidal substances, “biodegradable” means the compound or mixture in question yields 60 percent of its theoretical maximum carbon dioxide and demonstrate a removal of at least 70 percent of dissolved organic carbon within 28 days as described in EPA 712-C-98-075 (OPPTS 835.3100 Aerobic Aquatic Biodegradation).

* * * * *

Environmentally acceptable lubricants means lubricants that are “biodegradable” and “non-toxic,” and are not “bioaccumulative” as defined in this Subpart. Products meeting the definition of “environmentally acceptable lubricant” include those labeled by the following labeling programs: Blue Angel, European Ecolabel, Nordic Swan, the Swedish Standards SS 1554434 and 155470, Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) requirements, and EPA’s Design for the Environment (DfE).

* * * * *

Federally-protected waters means waters within 12 nautical miles of the United States that are also part of any of the following:

- (1) Marine sanctuaries designated under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) or Marine National Monuments designated under the Antiquities Act of 1906;
- (2) A unit of the National Wildlife Refuge System, including Wetland Management Districts, Waterfowl Production Areas, National Game Preserves, Wildlife Management Areas, and National Fish and Wildlife Refuges;
- (3) National Wilderness Areas; and
- (4) Any component designated under the National Wild and Scenic Rivers System.

Hazardous material means any hazardous material as defined in 49 CFR 171.8.

* * * * *

Non-toxic means a substance must pass both OECD 201, 202, and 203 for acute toxicity testing, and OECD 210 and 211 for chronic toxicity testing. If a substance is evaluated for the formulation and main constituents, the LC50 of hydraulic fluids must be at least 100 mg/L and the LC50 of greases, two-stroke oils, and all other total loss lubricants must be at least 1000 mg/L. If a substance is evaluated for each constituent substance, rather than the complete formulation and main compounds, then constituents comprising less than 20 percent of hydraulic fluids can have an LC50 between 10-100 mg/L or a no observed effect concentration (NOEC) between 1-10 mg/L, constituents comprising less than 5 percent of hydraulic fluids can have an LC50 between 1-10 mg/L or a NOEC between 0.1-1 mg/L, and constituents comprising less than 1 percent of hydraulic fluids can have an LC50 less than 1 mg/L or a NOEC between 0-0.1 mg/L.

Person in charge (PIC) means the single individual named master of the vessel or placed in charge of the vessel, by the U.S. Department of Defense or by the Department in which the U.S. Coast Guard is operating, as appropriate, and who is responsible for the operation, manning, victualing, and supplying of the vessel of the Armed Forces.

(1) Examples of a PIC include but are not limited to:

- (i) A Commanding Officer, Officer in Charge, or senior commissioned officer on board the vessel;
- (ii) A civilian, military, or U.S. Coast Guard person assigned to a shore command or activity that has been designated as the PIC for one or more vessels, such as a group of boats or craft;
- (iii) A Tugmaster, Craftmaster, Coxswain, or other senior enlisted person onboard the vessel;
- (iv) A licensed civilian mariner onboard a Military Sealift Command vessel; or
- (v) A contracted commercial person at a shore installation that is not part of the Armed Forces but as identified by the U.S. Department of Defense or the Department in which the U.S. Coast Guard is operating.

* * * * *

Toxic materials means any toxic pollutant identified in 40 CFR 401.15.

* * * * *

Waters subject to UNDS means the navigable waters of the United States, including the territorial seas and the waters of the contiguous zone, as these terms are defined in the Clean Water Act (33 U.S.C. 1362).

4. Revise Subpart D to read as follows:

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

Sec.

1700.14 Aqueous film-forming foam.

1700.15 [Reserved].

1700.16 Chain locker effluent.

1700.17 [Reserved].

1700.18 [Reserved].

1700.19 [Reserved].

1700.20 [Reserved].

1700.21 [Reserved].

1700.22 Distillation and reverse osmosis brine.
1700.23 Elevator pit effluent.
1700.24 [Reserved].
1700.25 Gas turbine water wash.
1700.26 [Reserved].
1700.27 [Reserved].
1700.28 [Reserved].
1700.29 Non-oily machinery wastewater.
1700.30 Photographic laboratory drains.
1700.31 Seawater cooling overboard discharge.
1700.32 Seawater piping biofouling prevention.
1700.33 Small boat engine wet exhaust.
1700.34 [Reserved].
1700.35 [Reserved].
1700.36 [Reserved].
1700.37 [Reserved].
1700.38 Weldeck discharges.
1700.39 Exceptions.
1700.40 Commingling of discharges.
1700.41 Records.
1700.42 Non-compliance reports.

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

§ 1700.14 Aqueous film-forming foam.

(a) For the purposes of this section, regulated aqueous film-forming foam (AFFF) refers only to firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.

(b) For vessels that sail seaward of waters subject to UNDS at least once per month, discharges of AFFF are prohibited (i.e., collect and store for on shore disposal or discharge when the vessel is located seaward of waters subject to UNDS).

(c) For vessels that do not sail seaward of waters subject to UNDS at least once per month:

(1) Discharges of fluorinated AFFF are prohibited (i.e., collect and store for onshore disposal or discharge when the vessel is located seaward of waters subject to UNDS); and

(2) Discharges of a non-fluorinated or alternative foaming agent are prohibited in port or in or near federally-protected waters, and should occur as far from shore as possible.

§ 1700.15 [Reserved].

§ 1700.16 Chain locker effluent.

(a) For all vessels, except submarines, the anchor chain must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as it is being hauled out of the water to remove sediment and organisms.

(b) For all vessels, the chain lockers must be cleaned periodically to eliminate accumulated sediments and any potential accompanying pollutants. The dates of all chain locker inspections must be recorded in the ship's log or other vessel recordkeeping documentation.

(c) For vessels that sail seaward of waters subject to UNDS at least once per month, chain lockers shall not be rinsed or pumped out within waters subject to UNDS. If technically feasible, the chain locker shall be periodically cleaned, rinsed, and/or the accumulated water and sediment (i.e., chain locker effluent) shall be pumped out prior to entering waters subject to UNDS (preferably in mid-ocean).

(d) For vessels that do not sail seaward of waters subject to UNDS at least once per month, if a discharge of chain locker effluent occurs within waters subject to UNDS it shall occur at the greatest distance practicable from shore and, if technically feasible, shall not be discharged in federally- protected waters.

§ 1700.17 [Reserved].

§ 1700.18 [Reserved].

§ 1700.19 [Reserved].

§ 1700.20 [Reserved].

§ 1700.21 [Reserved].

§ 1700.22 Distillation and reverse osmosis brine.

Brine from the distillation system and reverse osmosis reject water shall not be discharged if it comes in contact with machinery or industrial equipment (other than distillation or reverse osmosis machinery), toxic or hazardous materials, or wastes.

§ 1700.23 Elevator pit effluent.

Direct discharges of elevator pit effluent overboard are prohibited. Notwithstanding the prohibition of direct discharges of elevator pit effluent overboard, if the elevator pit effluent is commingled with any other discharge for the purposes of treatment prior to discharge, then under no circumstances may oils, including oily mixtures, be discharged from that combined discharge in quantities that:

- (a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or
- (b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or
- (c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or
- (d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.24 [Reserved].

§ 1700.25 Gas turbine water wash.

Direct discharges of gas turbine water wash overboard are prohibited. Gas turbine water wash should be collected separately and disposed of at an onshore facility. Notwithstanding the

prohibition of direct discharges of gas turbine water wash overboard, if the gas turbine water wash is commingled with any other discharge for the purposes of treatment prior to discharge then under no circumstances may oils, including oily mixtures be discharged from that combined discharge in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining Shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.26 [Reserved].

§ 1700.27 [Reserved].

§ 1700.28 [Reserved].

§ 1700.29 Non-oily machinery wastewater.

If non-oily machinery wastewater is discharged directly overboard or if it is commingled with any other discharge for the purposes of treatment prior to discharge, then the discharge must be free from any additives that are toxic or bioaccumulative in nature and under no circumstances may oils, including oily mixtures be discharged from that combined discharge in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

(b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon

adjoining shorelines; or

(c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or

(d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.30 Photographic laboratory drains.

Direct discharges of photographic laboratory drains overboard are prohibited.

§ 1700.31 Seawater cooling overboard discharge.

For discharges from vessels that are less than 79 feet in length:

(a) When possible, non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges should occur when the vessel is underway in order to minimize any thermal impacts to the receiving water.

(b) To reduce the production and discharge of seawater cooling overboard discharge, the vessel should use shore based power when in port if:

(1) Shore power is readily available for the vessel from utilities or port authorities; and

(2) Shore based power supply systems are capable of providing all needed electricity required for vessel operations; and

(3) The vessel is equipped to connect to shore-based power and such systems are compatible with the available shore power.

(c) Fouling organisms must be removed from seawater piping on a regular basis. Fouling organisms removed during cleanings shall not be discharged.

For discharges from vessels that are greater than or equal to 79 feet in length:

(d) When possible, non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges should occur when the vessel is underway in order to minimize any thermal impacts to the receiving waters.

(e) To reduce the production and discharge of seawater cooling overboard discharge, the vessel should use shore based power when in port if:

(1) Shore power is readily available for the vessel from utilities or port authorities; and

(2) Shore based power supply systems are capable of providing all needed electricity required for vessel operations; and

(3) The vessel is equipped to connect to shore-based power and such systems are compatible with the available shore power.

(f) Maintenance of all piping and seawater cooling systems must meet the requirements of § 1700.32 (Seawater Piping Biofouling Prevention). For all vessels, except submarines, fouling organisms removed during maintenance shall not be discharged.

§ 1700.32 Seawater piping biofouling prevention.

(a) Seawater piping biofouling chemicals subject to registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (40 CFR 152.15) must be used in accordance with the FIFRA label. Pesticides or chemicals banned for use in the United States shall not be discharged.

(b) Only the minimum amount of biofouling chemicals should be used to keep fouling under control.

(c) Fouling organisms must be removed from seawater piping on a regular basis. For all vessels, except submarines, fouling organisms removed during cleanings shall not be discharged.

§ 1700.33 Small boat engine wet exhaust.

For discharges from vessels that are less than 79 feet in length:

(a) Vessels generating small boat engine wet exhaust must be maintained in good operating order, well tuned, and functioning according to manufacturer specifications in order to decrease pollutant concentrations and volumes in small boat engine wet exhaust.

(b) Low sulfur or alternative fuels should be used to reduce the concentration of pollutants in discharges from small boat engine wet exhaust.

(c) If possible, use four-stroke engines instead of two-stroke engines for vessels generating small boat engine wet exhaust. Use of a four-stroke engine may minimize the discharge of pollutants.

(d) Vessels using two-stroke engines must use environmentally acceptable lubricants unless use of such lubricants is technologically infeasible. If technologically infeasible, the use and justification for the use of a non-environmentally acceptable lubricant must be recorded in the vessel recordkeeping documentation.

§ 1700.34 [Reserved].

§ 1700.35 [Reserved].

§ 1700.36 [Reserved].

§ 1700.37 [Reserved].

§ 1700.38 Welldeck discharges.

Welldeck discharges that contain graywater from smaller vessels are prohibited. Welldeck discharges containing washdown from gas turbine engines are prohibited within three nautical miles of the United States and shall be discharged seaward of waters subject to UNDS when possible. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil in quantities that:

(a) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or

- (b) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or
- (c) Contain an oil content above 15 ppm as measured by EPA Method 1664 or other appropriate method for determination of oil content as accepted by the International Maritime Organization (IMO) (e.g., ISO Method 9377) or U.S. Coast Guard; or
- (d) Otherwise are harmful to the public health or welfare of the United States.

§ 1700.39 Exceptions.

- (a) Notwithstanding each of the MPCD performance standards established in this Part, a vessel of the Armed Forces is authorized to discharge, into waters subject to UNDS, when the person in charge (PIC) or their designated representative determines that such discharge is necessary to prevent loss of life, personal injury, vessel endangerment, or severe damage to the vessel.
- (b) A vessel of the Armed Forces must maintain the following records for all discharges under paragraph (a) of this section:
 - (1) Name and title of the PIC who determined the necessity of the discharge;
 - (2) Date, location, and estimated volume of the discharge;
 - (3) Explanation of the reason the discharge occurred; and
 - (4) Actions taken to avoid, minimize, or otherwise mitigate the discharge.
- (c) All records prepared under paragraph (b) of this section must be maintained in accordance with § 1700.41.

§ 1700.40 Commingling of discharges.

If two or more regulated discharge streams are combined into one, the resulting discharge stream must meet the requirements applicable to all discharge streams that are combined prior to discharge.

§ 1700.41 Records.

(a) All records shall be generated and maintained in the ship's logs (main, engineering, and/or damage control) or an UNDS Record Book and shall include the following information:

(1) Vessel owner information (e.g., U.S. Navy, U.S. Coast Guard);

(2) Vessel name and class; and

(3) Name of the PIC.

(b) The PIC shall maintain complete records of the following information:

(1) Any inspection or recordkeeping requirement as specified in §§ 1700.14-1700.38;

(2) Any instance of an exception and the associated recordkeeping requirements as specified in § 1700.39; and

(3) Any instance of non-compliance with any of the performance standards as specified in §§ 1700.14-1700.38. The information recorded shall include the following:

(i) Description of any non-compliance and its cause;

(ii) Date of non-compliance;

(iii) Period of non-compliance (time and duration);

(iv) Location of the vessel during non-compliance;

(v) Corrective action taken;

(vi) Steps taken or planned to reduce, eliminate, and prevent non-compliance in the future; and

(vii) If the non-compliance has not been corrected, an estimate of the time the non-compliance is expected to continue.

(c) All records prepared under this section must be maintained for a period of five years from the date they are created. The information in this paragraph will be available to EPA, states, or

the U.S. Coast Guard upon request. Any information made available upon request shall be appropriately classified, as applicable, and handled in accordance with applicable legal requirements regarding national security.

§ 1700.42 Non-compliance reports.

The person in charge (PIC) must report any non-compliance, including the information as required under § 1700.41, to the Armed Service's designated office in writing and/or electronically within five days of the time the PIC becomes aware of the circumstances.

[FR Doc. 2014-01370 Filed 01/31/2014 at 8:45 am; Publication Date: 02/03/2014]