



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**DEPARTMENT OF DEFENSE**

**40 CFR Part 1700**

**[EPA-HQ-OW-2013-0469; FRL-9957-85-OW]**

**RIN 2040-AD39**

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

**AGENCY:** Environmental Protection Agency and Department of Defense.

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Environmental Protection Agency (EPA) and the U.S. Department of Defense (DoD) are promulgating discharge performance standards for 11 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. When implemented, the discharge performance standards will reduce the adverse environmental impacts associated with the vessel discharges, stimulate the development of improved vessel pollution control devices, and advance the development of environmentally sound vessels of the Armed Forces. The 11 discharges addressed by the final rule are the following: aqueous film-forming foam (AFFF), 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.

**DATES:** This final rule is effective on [**Insert date 30 days after publication in the Federal Register**].

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-HQ-OW-2013-0469. All documents in the docket are listed on the <http://regulations.gov> website. The complete public record for this rulemaking, including responses to comments received during the rulemaking, can be found under Docket No. EPA-HQ-OW-2013-0469.

**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](mailto: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](mailto:mike.pletke@navy.mil).

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### **I. General Information**

*A. Legal Authority for the Final Rule*

The EPA and DoD promulgate this rule under the authority of Clean Water Act (CWA) section 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 section 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 section 312(a)(12) through (14) and (n) (33 U.S.C. 1322(a)(12) through (14) and (n)).

*B. Purpose of the Final 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 of environmentally sound ships. Section 312(n)(3)(A) of the CWA requires the 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 section 312(a)(12)), unless the Secretary finds that compliance with UNDS would not be in the national security interests of the United States (CWA section 312(n)(1)).

This rule amends title 40 Code of Federal Regulations (CFR) part 1700 to establish discharge performance standards for 11 discharges incidental to the normal operation of a vessel of the Armed Forces from among the 25 discharges for which the EPA and DoD previously determined (64 FR 25126, May 10, 1999) that it is reasonable and practicable to require a marine pollution control device (MPCD). The 11 discharges addressed by this rule 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.

These discharge performance standards do not become enforceable until after promulgation of a final rule, as well as promulgation of regulations by DoD under CWA section 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 National Pollutant Discharge Elimination System (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 Regulated by the Final Rule?*

The final rule applies to vessels of the Armed Forces. For the purposes of the rulemaking, the term “vessel of the Armed Forces” is defined at CWA section 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 final rule. The final rule does not apply to commercial vessels; private vessels; vessels owned or operated by state, local, or tribal governments; vessels under the jurisdiction of the 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 Final Rule?*

This rule is 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 section 1322(n)(8)(A)). The rule applies in both fresh and marine waters and can include bodies of water such as rivers, lakes, and oceans. 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, where 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 final rule is not applicable seaward of the contiguous zone.

*E. Rulemaking Process*

The UNDS rulemaking is a joint rulemaking between the EPA and DoD and is under development in three phases. The first two phases reflect joint rulemaking between the EPA and DoD; the third phase is a DoD-only rule.

### **Phase I**

The 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, the 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 section 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 by the Administrator and the Secretary to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth by UNDS.

During Phase I, the 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 and 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 effluent; underwater ship husbandry; and welldeck discharges (40 CFR 1700.4).

During Phase I, the 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 sections 312(n)(6)(A) and 312(n)(7)). However, section 312(n)(5)(D) of the CWA authorizes a Governor of any state to submit a petition to the EPA and DoD and requesting the re-evaluation of a prior determination that a MPCD is required for a particular discharge (40 CFR 1700.4) or that 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 section 312(n)(5)(D) and 40 CFR 1700.11).

## **Phase II**

Section 312(n)(3) of the CWA provides for Phase II and requires the EPA and DoD to develop federal discharge performance standards for each of the 25 discharges identified in Phase I as requiring control. In doing so, the 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 discharge performance standards, CWA section 312(n)(2)(B) directs the 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 the 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.

The EPA and DoD developed a process to establish the Phase II discharge performance standards in three batches (three separate rulemakings). The first batch of discharge performance standards was proposed on February 3, 2014 (79 FR 6117) and addressed 11 of the 25 discharges identified as requiring control (64 FR 25126). A notice of proposed rulemaking for the second batch of discharge performance standards was published on October 7, 2016 (81 FR 69753) and addressed 11 additional discharges identified as requiring control (64 FR 25126). The third batch of discharge performance standards that will address the remaining three discharges will be proposed in a separate rule.

In developing the Phase II discharge performance standards, the EPA and DoD reference the 2013 NPDES Vessel General Permit and the 2014 NPDES Small Vessel General Permit (hereinafter referred to collectively as the NPDES VGPs) as the baseline for each comparable discharge incidental to the normal operation of a vessel of the Armed Forces (78 FR 21938,

April 12, 2013 and 79 FR 53702, September 10, 2014). The NPDES VGPs 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 three-mile territorial sea as defined in CWA section 502(8). The NPDES VGPs include effluent limits that are based on both the technology available to treat pollutants (i.e., technology-based effluent limitations), and limits that would be protective of the designated uses of the receiving waters (i.e., water quality-based effluent limits), including both non-numeric and numeric limitations. Additional information on NPDES permitting can be found on-line at <http://www.epa.gov/npdes/>.

Using the NPDES VGPs as a baseline for developing the performance standards for discharges incidental to the normal operation of a vessel of the Armed Forces allowed the EPA and DoD to maximize the use of the EPA's scientific and technical work developed to support the NPDES VGPs. The NPDES VGPs technology-based and water quality-based effluent limitations were then adapted, as appropriate, for the relevant discharges from vessels of the Armed Forces.

### **Phase III**

Phase III of UNDS requires DoD, in consultation with the 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 will be publicly released and are expected to be made available on the Defense Technical Information Center website: <http://www.dtic.mil/whs/directives/>. Similar to Phase II, Phase III will be promulgated in three batches.

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 a MPCD that meets the Phase II standards (CWA section 312 (n)(7)). It also will be unlawful for a vessel of the Armed Forces to discharge a regulated UNDS discharge into an UNDS no-discharge zone (i.e., waters where a prohibition on a discharge has been established) (CWA section 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 section 312(j)). The Secretary of the Department in which the U.S. Coast Guard is operating shall 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 section 312(k) and (n)(9)).

In addition, as of the effective date of the Phase III regulations, neither a state nor political subdivision a of state 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 section 312(n)(6)). CWA section 312(n)(7) provides for the establishment of no-discharge zones either (1) by state prohibition after application and a determination by the EPA, or (2) directly by EPA prohibition. The Phase I UNDS regulations established the criteria and procedures for establishing UNDS no-discharge zones (40 CFR 1700.9 and 40 CFR 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 the 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, the 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)). The 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 section 312(n)(7)(B)(ii) and 40 CFR 1700.10(b)).

The statute also requires the 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 section 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 a UNDS determination or standard if there is significant new information, not considered previously, that could reasonably result in a change to the determination or standard (CWA section 312(n)(5)(D) and 40 CFR 1700.11).

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

During the development of the rule, the EPA and DoD consulted with other federal agencies, states, and tribes regarding the reduction of adverse environmental impacts associated with discharges from vessels of the Armed Forces; development of innovative vessel pollution control technology; and advancement of environmentally sound vessels of the Armed Forces. In addition, the EPA and DoD reviewed comments on the NPDES VGPs.

*G. Supporting Documentation*

This rule is supported by “Technical Development Document (TDD) Phase I Uniform National Discharge Standards (UNDS) for Vessels of the Armed Forces,” the UNDS Phase I rules, the “Final 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP),” the “Vessel General Permit (VGP) Fact Sheet,” the “Final 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 Final 2013 Vessel General Permit (VGP),” the “Economics and Benefits Analysis of the Final 2013 Small Vessel General Permit (sVGP),” the “February 2014 Uniform

National Discharge Standards for Vessels of the Armed Forces--Phase II,” the “Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet,” the “Environmentally Acceptable Lubricants,” the “Biological Evaluation for the Uniform National Discharge Standards (UNDS) Program Phase II Batch One,” and the “National Consistency Determination: Uniform National Discharge Standards (UNDS) Program for Phase II Batch One Discharges.” These documents are available from the EPA Water Docket, Docket No. EPA-HQ-OW-2013-0469 (Email: [ow-docket@epa.gov](mailto: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 NPDES VGPs background documents also are available online: <https://www.epa.gov/npdes/vessels>.

## **II. UNDS Performance Standards Development**

During the development of the discharge performance standards, the EPA and DoD analyzed the information from the Phase I of UNDS, considered the relevant language in the NPDES VGPs effluent limitations, and took into the consideration the seven statutory factors listed in CWA section 312(n)(2)(B). These seven statutory factors are: 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 operational capability of the vessel; applicable U.S. law; applicable international standards; and the economic costs of the installation and use of the MPCD. The EPA and DoD determined that the NPDES VGPs effluent limitations, which include technology-based and water quality-based effluent limitations, provide a sound basis to serve as a baseline for developing the discharge performance standards for the 11 discharges in this rule. The subsections below outline the EPA

and DoD's approach to considering the seven statutory factors listed in CWA section 312(n)(2)(B).

#### *A. Nature of the Discharge*

During Phase I, the EPA and DoD gathered information on the discharges incidental to the normal operation of a vessel of the Armed Forces and developed nature of the discharge reports. The nature of the 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, the EPA and DoD reviewed relevant discharge information in the supporting documentation of the NPDES VGPs. The EPA and DoD briefly describe the nature of each of the 11 discharges below; however, the complete 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 cause thermal pollution and can contain aquatic nuisance species (ANS), nutrients, bacteria and pathogens (e.g., *E. coli* and fecal coliforms), oil and grease, metals, most conventional pollutants (e.g., organic matter, bicarbonate, and 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 the EPA recommended 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, the EPA and DoD discuss the constituents of concern released into the



environment and potential water quality impacts. The discharge performance standards will reduce the discharge of constituents of concern and mitigate the environmental risks to the receiving waters.

### *C. Cost, Practicability, and Operational Impacts*

The universe of vessels of the Armed Forces affected by the rule encompasses more than 6,000 vessels distributed among the U.S. Navy, Military Sealift Command, 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 80 percent of the vessels of the Armed Forces are less than 79 feet in length. Larger vessels (i.e., vessels with length greater than or equal to 79 feet) comprise 20 percent of the vessels of the Armed Forces. The EPA and DoD considered vessel class, type, and size when developing the discharge standards, as not all vessels of the Armed Forces have the same discharges. For more information on the various vessel classes, characteristics, and missions, see Appendix A.

The EPA and DoD assessed the relative costs, practicability, and operational impacts of the rule by comparing current operating conditions and practices of vessels of the Armed Forces with the anticipated operating conditions and practices that will be required to meet the discharge performance standards. The EPA and DoD determined that the discharge performance standards applicable to operating conditions and practices for the 11 discharges will only result in a marginal increase in performance costs, practicability, and operational impacts.

### *D. Applicable U.S. and International Law*

The 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 either because vessels of the Armed Forces are entitled to sovereign immunity under international law or because any particular treaty may apply different approaches to the adoption of appropriate environmental control measures consistent with the objects and purposes of such treaties. The EPA and DoD incorporated any relevant information in the development of the discharge standards after reviewing the requirements of the following treaties and domestic implementing legislation, as well as other relevant and potentially applicable U.S. environmental laws: 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; Act to Prevent Pollution from Ships; CWA section 311, as amended by the Oil Pollution Control Act of 1990; CWA section 402 and the National Pollutant Discharge Elimination System Vessel General Permit and small Vessel General Permit; 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 St. Lawrence Seaway Regulations.

#### *E. Definitions*

The EPA and DoD added UNDS definitions to 40 CFR part 1700. Specifically, this rule defines the terms: bioaccumulative; biodegradable; environmentally acceptable lubricants; federally-protected waters; hazardous material; minimally-toxic; not bioaccumulative; person in charge; toxic materials; and waters subject to UNDS.

### **III. UNDS Performance Standards**

This section describes the performance standards determined to be reasonable and practicable to mitigate the adverse impacts to the marine environment for the 11 discharges. In developing these standards, the EPA and DoD considered the information from Phase I of UNDS, the NPDES VGPs effluent limitations, and the seven statutory factors listed in CWA section 312(n)(2)(B). For more information on each discharge included in this rule, please see the Phase I Uniform National Discharge Standards for Vessels of the Armed Forces: Technical Development Document; EPA 821-R-99-001.

The 11 discharge performance standards described in each section below apply to vessels of the Armed Forces operating within waters subject to UNDS, except as otherwise expressly excluded in the “exceptions” in 40 CFR 1700.39. In addition, if two or more regulated discharge streams are combined prior to discharge, then the resulting discharge would need to meet the discharge performance standards applicable to each of the discharges that are being combined (40 CFR 1700.40). Furthermore, recordkeeping (40 CFR 1700.41) and non-compliance reporting (40 CFR 1700.42) apply generally to each discharge performance standard unless expressly provided in a particular discharge performance standard.

#### *A. Aqueous Film-Forming Foam*

The EPA and DoD prohibit the discharge of AFFF (i.e., AFFF used during training, testing, or maintenance operations) for vessels that sail seaward of waters subject to UNDS at least once per month. For vessels that do not sail seaward of waters subject to UNDS at least once per month, discharges of fluorinated AFFF are prohibited and discharges of non-fluorinated or alternative foaming agent are prohibited in port or in or near federally-protected waters, and must occur as far from shore as possible.

### *B. Chain Locker Effluent*

The EPA and DoD 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. The EPA and DoD also 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, the EPA and DoD prohibit the rinsing or pumping out of chain lockers for vessels that sail seaward of waters subject to UNDS at least once per month. For vessels that do not sail seaward of waters subject to UNDS at least once per month, the rinsing or pumping out of chain lockers must occur as far from shore as possible and, if technically feasible, must not occur in federally-protected waters.

### *C. Distillation and Reverse Osmosis Brine*

The EPA and DoD prohibit the discharge of the distillation and reverse osmosis brine and the discharge of reverse osmosis reject water 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*

The EPA and DoD prohibit the direct discharge of elevator pit effluent. Notwithstanding the prohibition of direct discharges of elevator pit effluent, elevator pit effluent can be discharged when 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 1664a 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*

The EPA and DoD prohibit the direct discharge of gas turbine water wash. To the greatest extent practicable, gas turbine water wash must be collected separately and disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements. Notwithstanding the prohibition of direct discharges of gas turbine water wash overboard, 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 1664a 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*

The EPA and DoD require that discharges of non-oily machinery wastewater must not contain any additives that are toxic or bioaccumulative in nature. In addition, under no

circumstances may oils, including oily mixtures 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 1664a 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*

The EPA and DoD prohibit the discharge of photographic laboratory drain effluent.

#### *H. Seawater Cooling Overboard Discharge*

The EPA and DoD require that non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water, and other seawater cooling overboard discharges be minimized, to the greatest extent practicable, when the vessel is in port. In addition, the standard provides 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. Specifically, the EPA and DoD require that, for vessels that are less than 79 feet in length, fouling organisms must be removed from seawater piping on a regular basis and the discharge of such removed organisms is prohibited. For vessels that are greater than or equal to 79 feet in length, maintenance of all piping and seawater cooling systems must meet the requirements of 40 CFR 1700.32 (Seawater Piping Biofouling Prevention) and fouling organisms removed from seawater piping must not be discharged. Submarines have suction clearing procedures, which must be performed for vessel safety purposes; therefore, submarines are not required to meet these operational removal requirements.

### *I. Seawater Piping Biofouling Prevention*

The EPA and DoD require a performance standard for seawater piping biofouling prevention that minimizes, to the greatest extent practicable, the amount of biofouling chemicals (e.g., chlorine) used to keep fouling under control. Fouling organisms must be removed from seawater piping on a regular basis. Fouling organisms removed during a cleaning event are prohibited from being discharged. For all vessels, except submarines, the discharge of fouling organisms removed during cleanings is prohibited.

Lastly, this performance standard requires practices consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 et seq.) registration requirements for chemicals used to control biofouling of seawater piping, and prohibits the discharge of pesticides or chemicals banned for use in the United States.

### *J. Small Boat Engine Wet Exhaust*

The EPA and DoD require that low sulfur or alternative fuels be used to the greatest extent practicable. In addition, the performance standard requires that, to the greatest extent practicable, four-stroke engines be used instead of two-stroke engines. Vessels using two-stroke engines are required to use environmentally acceptable lubricants (found in the definitions for this term at 40 CFR 1700.3) unless such use would be 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.

### *K. Welldeck Discharges*

The EPA and DoD prohibit welldeck discharges containing graywater from smaller vessels. In addition, discharges containing washdown of gas turbine engines within nautical miles of the United States is prohibited and, to the greatest extent practicable, must be discharged

seaward of waters subject to UNDS. Welldeck discharges from equipment and vehicle washdowns need to be free from garbage, and must 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 1664a 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 in the Final Rule**

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

##### **1. Amendment to subsections referenced in section 1700.2 Effect**

The EPA and DoD 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 section 1700.14” to “Federal standards of performance for each required Marine Pollution Control Device are listed in sections 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 sections 1700.14 through 1700.38.”



## 2. Reservation of Sections

As noted previously, the EPA and DoD are proposing the Phase II standards in three batches. For the purpose of proposing the remaining batches, this rule reserves the following sections for those future rulemaking actions:

Section 1700.17 Clean Ballast;

Section 1700.18 Compensated Fuel Ballast;

Section 1700.21 Dirty Ballast;

## 3. Section 1700.39 Exceptions

The EPA and DoD add an “Exceptions” subsection at section 1700.39, which provides a place to identify certain excluded discharges from the scope of UNDS, notwithstanding the performance standards, in situations where vessel safety or lives are endangered. The section also identifies requirements for maintaining records of all discharge exceptions.

## 4. Section 1700.40 Commingling of Discharges

The EPA and DoD add a “Commingling of Discharges” subsection at section 1700.40. By adding this subsection, the EPA and DoD stipulate 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 unless otherwise specified by the specific discharge standard.

## 5. Section 1700.41 Records

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

## 6. Section 1700.42 Non-Compliance Reports

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

## **V. Key Changes and Improvements since the Proposed Rule**

### *A. Public Comment*

On February 3, 2014, the EPA and DoD published proposed discharge performance standards for the 11 discharges in Batch One. The proposed rule established a public comment period of 60 days that closed on April 4, 2014. The public had the option of submitting comments by email, mail, hand delivery, or electronically via the Federal eRulemaking Portal ([www.regulations.gov](http://www.regulations.gov)). The public comments are available for public viewing in the docket under Docket No. EPA-HQ-OW-2013-0469.

The EPA and DoD consider the public comment period vital to creating a rule that is effective at meeting regulatory standards and also is readily understandable and useful to the public. The EPA and DoD received one comment on the proposed rule regarding some of the terms and definitions used in the UNDS Phase II Batch One Proposed Rule. The comment noted that the definitions used in the UNDS proposed rule were slightly different than the definitions used in the NPDES VGP and could potentially cause confusion in production and sales of certain goods, such as lubricants, that are widely used on both commercial vessels and vessels of the Armed Forces. The EPA and DoD agreed with the comment and incorporated changes to the following definitions in Section 1700.3 of this final rule:

- Aquatic Toxicity: The EPA and DoD define and use the term “minimally-toxic,” found in the final 2013 VGP, rather than the “non-toxic” terminology used in the UNDS Phase II Batch One proposed rule.

- **Bioaccumulation:** The proposed UNDS rule defines “bioaccumulative” as determined by test methods; this is not consistent with the “not bioaccumulative” definition used in the 2013 VGP for lubricants. The 2013 VGP does not require bioaccumulation testing of biodegradable portions of lubricants as, by definition, they will not persist and accumulate in the environment. This final rule revises the term “bioaccumulative” to be consistent with the final 2013 VGP.
- **Biodegradability:** In the proposed rule, the EPA and DoD proposed testing the biodegradability of mixtures. However, to increase consistency with the terms and definitions found in the final 2013 VGP, the EPA and DoD use the definition of biodegradability established in the final 2013 VGP in place of the definition presented in the UNDS Phase II Batch One proposed rule. The VGP does not require testing the biodegradability of mixtures.

#### *B. Endangered Species Act (ESA) Consultation*

Pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) the EPA and DoD consulted the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively “the Services.” The Biological Evaluation developed by the EPA and DoD concluded that the issuance of the Batch One final rule for the Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II is not likely to adversely affect listed or proposed species or adversely modify designated or proposed critical habitat.

#### *C. Coastal Zone Management Act (CZMA) Consistency Determination*

Pursuant to Section 307 of the CZMA, the EPA and DoD have determined that the performance standards are consistent to the maximum extent practicable with the enforceable policies of federally-approved coastal state and territory Coastal Management Plans (CMPs) for the coastal zones including state waters where discharges from vessels of the Armed Forces

would be regulated by UNDS. Following proposal of the Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II issued on February 3, 2014, the EPA and DoD provided 34 states and territories with the EPA and DoD's August 2016 "National Consistency Determination: Uniform National Discharge Standards (UNDS) Program for Phase II Batch One Discharges."

#### *D. Development of Performance Standards in Batches*

The EPA and DoD are modifying the batch process. In the proposed rule, the EPA and DoD indicated that Phase II – the establishment of discharge performance standards – would be completed in two batches. The EPA and DoD have since determined to develop the discharge performance standards in three batches to allow for more time to collect and incorporate additional information into the development of the discharge performance standards.

#### *E. Revisions to Definitions and Standards*

The EPA and DoD are modifying the definitions and standards to make them more clear and concise, in addition to changes made due to the public and federal comments. The non-substantive changes made to the definitions and standards are intended to clarify, simplify, and/or improve understanding and readability of the discharge performance standards. There are no technical changes to the definitions or standards.

### **VI. Related Acts of Congress and Executive Orders**

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-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 and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden, as the EPA and DoD have determined that Phase II of UNDS does not create any additional collection of information beyond that already mandated under the 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 the EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act (RFA)*

We certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action implements mandates specifically and explicitly set forth in CWA section 312 without the exercise of any policy discretion by the EPA.

*E. Executive Order 13132: Federalism*

The EPA and DoD concluded that the rule, once finalized in Phase III, will have federalism implications. Once the 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, the EPA and DoD provide the following federalism summary impact statement. During Phase I of UNDS, the EPA and DoD conducted two rounds of consultation meetings (i.e., outreach briefings) to allow states and local officials 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. The 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, the EPA and DoD consulted again with state representatives early in the process of developing the regulation to allow them to have meaningful and timely input into the development of the discharge standards. On March 14, 2013, the EPA held a Federalism consultation briefing in Washington, DC, which was attended by representatives from the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the County Executives of America, the Environmental Council of States, the Association of Clean Water Administrators, two U.S. states and one U.S. territory, in order to obtain meaningful and timely input in the development of the proposed discharge standards. The EPA and DoD informed the state representatives that the two agencies planned to use the NPDES VGPs effluent limitations as a baseline for developing the discharge performance standards for the 25 discharges identified in Phase I as requiring control.

Pursuant to the terms of Executive Order 13132, as well as EPA policy for implementing it, a federalism summary impact statement is required to summarize not only the issues and concerns raised by state and local government commenters during the course of the rule's development, but also to describe how and the extent to which the agencies addressed those concerns. No formal, substantive comments were received from state and local government entities during the course of developing this action.

As required by section 8(a) of Executive Order 13132, the EPA included a certification from its Federalism Official stating that the EPA had met the Executive Order's requirements in a meaningful and timely manner. A copy of this certification is included in the public version of the official record for this final action.

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

This action does not have tribal implication as specified in Executive Order 13175. 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. The EPA hosted a National Teleconference on March 23, 2013, in order to obtain meaningful and timely input during the development of the discharge standards. The EPA and DoD informed the representatives that the two agencies planned to use the NPDES VGPs effluent limitations as a baseline for developing the discharge performance standards for the 25 discharges identified in Phase I as requiring control. During the Tribal consultation period, the EPA and DoD did not receive any substantive comments from the Indian Tribal Governments.

*G. Coastal Zone Management Act*

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federal agency activity or Federally licensed or permitted activity occurring within (or outside but affecting) the coastal zone of a state with an approved Coastal Management Plan (CMP) be consistent with the enforceable policies of that approved program to the maximum extent practicable. According to the August 2016 “National Consistency Determination: Uniform National Discharge Standards (UNDS) Program for Phase II Batch One Discharges,” the EPA and DoD have determined that the performance standards are consistent to the maximum extent practicable with the enforceable policies of the 34 federally-approved state and territory CMPs.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA and DoD do not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The 11 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 reduce the impacts to the receiving waters and any person using the receiving waters, regardless of age.

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

This action is not subject to Executive Order 13211, because is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This action involves technical standards. The EPA and DoD propose to use ISO Method



9377– determination of hydrocarbon oil index. ISO Method 9377 is a voluntary consensus standard developed by an independent, non-governmental international organization.

#### *K. Endangered Species Act*

Section 7(a)(2) of the Endangered Species Act (ESA) requires each Federal agency, in consultation with and with the assistance of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), collectively “the Services,” to ensure that the actions they authorize, fund, or carry out are not likely to adversely affect the continued existence of any endangered or threatened species (referred to as “listed species”) or result in the destruction or adverse modification of their designated critical habitats.

The Services have published regulations implementing ESA section 7 at 50 CFR Part 402. The regulations provide that a federal agency (such as the EPA and DoD) must consult with FWS, NMFS, or both if the agency determines that an activity authorized, funded, or carried out by the agency may affect listed species or critical habitat. The kinds of effects that trigger the consultation obligation could include, among other things, beneficial, detrimental, direct and indirect effects. The EPA and DoD commenced discussion with the Services in November 2014. The consultation process included multiple steps: briefings with the Services on the contents of the rulemaking, discussions of the EPA and DoD’s proposed outline and methodological approach, information exchanges and requests on current species lists, rulemaking schedule, and ultimately the submittal of a consultation package on October 11, 2016.

#### *L. 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, to 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 causes, or is likely to cause, economic or environmental harm or harm to human health.

As part of the environmental effects analyses, the EPA and DoD considered the control of invasive species when developing the discharge performance standards for all 11 discharges (See Section II).

*M. 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 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. These discharge standards are designed to control or eliminate the discharges incidental to the normal operation of vessels of the Armed Forces, ultimately minimizing the potential for causing adverse impacts to the marine environment including coral reefs.

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

The EPA and DoD believe that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The discharge performance standards only apply to vessels of the Armed Forces and ultimately increase environmental protection.

*O. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 1700**

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

Dated: December 8, 2016.

Gina McCarthy,  
Administrator, Environmental Protection Agency.

Dated: December 22, 2016.

Steven R. Iselin,  
Acting Assistant Secretary of the Navy, Energy, Installations, and Environment.

For the reasons stated in the preamble, title 40, chapter VII, of the Code of Federal Regulations is 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 vessels of the Armed Forces that require control within the navigable waters of the United States, including the territorial seas 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. Amend § 1700.3 by adding in alphabetical order definitions for "Bioaccumulative", "Biodegradable", "Environmentally acceptable lubricants", "Federally-protected waters", "Hazardous material", "Minimally-toxic", "Not bioaccumulative", "Person in charge", "Toxic materials", and "Waters subject to UNDS", to read as follows:

**§ 1700.3 Definitions.**

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*Bioaccumulative* means the opposite of *not bioaccumulative*.

*Biodegradable* means the following for purposes of the standards:

(1) Regarding *environmentally acceptable lubricants* and greases, *biodegradable* means lubricant formulations that contain at least 90% (weight in weight concentration or w/w) or grease formulations that contain at least 75% (w/w) of a constituent substance or constituent substances (only stated substances present above 0.10% must be assessed) that each demonstrate either the removal of at least 70% of dissolved organic carbon, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand within 28 days. Test methods include: Organization for Economic Co-operation and Development Test Guidelines 301 A-F, 306, and 310, ASTM 5864, ASTM D-7373, OCSPP Harmonized Guideline 835.3110, and International Organization for Standardization 14593:1999. For lubricant formulations, the 10% (w/w) of the formulation that need not meet the above biodegradability requirements, up to 5% (w/w) may be non-biodegradable, but not bioaccumulative, while the remaining 5-10% must be inherently biodegradable. For grease formulations, the 25% (w/w) of the formulation that need not meet the above biodegradability requirement, the constituent substances may be either inherently biodegradable or non-biodegradable, but may not be bioaccumulative. Test methods to demonstrate inherent biodegradability include: OECD Test Guidelines 302C (>70% biodegradation after 28 days) or OECD Test Guidelines 301 A-F (>20% but <60% biodegradation after 28 days).

(2) Regarding cleaning products, *biodegradable* means products that demonstrate either the removal of at least 70% of dissolved organic carbon, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand

within 28 days. Test methods include: Organization for Economic Cooperation and Development Test Guidelines 301 A-F, 306, and 310, and International Organization for Standardization 14593:1999.

(3) Regarding biocidal substances, *biodegradable* means a compound or mixture that yields 60% of theoretical maximum carbon dioxide and demonstrate a removal of at least 70% 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*, *minimally-toxic*, and *not bioaccumulative* as defined in this subpart. The following labeling programs and organizations meet the definition of being *environmentally acceptable lubricants*: Blue Angel, European Ecolabel, Nordic Swan, the Swedish Standards SS 155434 and 155470, Safer Choice, and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) requirements.

\*\*\*\*\*

*Federally-protected waters* means waters within 12 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.

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*Minimally-toxic* means a substance must pass either OECD 201, 202, and 203 for acute toxicity testing, or OECD 210 and 211 for chronic toxicity testing. For purposes of the standards, equivalent toxicity data for marine species, including methods ISO/DIS 10253 for algae, ISO TC147/SC5/W62 for crustacean, and OSPAR 2005 for fish, may be substituted for OECD 201, 202, and 203. If a substance is evaluated for the formulation and main constituents, the LC50 of 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% of 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% of 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% of fluids, can have an LC50 less than 1 mg/L or a NOEC between 0-0.1 mg/L.

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*Not bioaccumulative* means any of the following: the partition coefficient in the marine environment is  $\log K_{ow} < 3$  or  $> 7$  using test methods OECD 117 and 107; molecular mass  $> 800$  Daltons; molecular diameter  $> 1.5$  nanometer; bioconcentration factor (BCF) or bioaccumulation factor (BAF) is  $< 100$  L/kg, using OECD 305, OCSPP 850.1710 or OCSPP 850.1730, or a field-measured BAF; or polymer with molecular weight (MW) fraction below 1,000 g/mol is  $< 1\%$ .

*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. Examples of a PIC include, but are not limited to:

(1) A Commanding Officer, Officer in Charge, or senior commissioned officer on board the vessel;

(2) 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;

(3) A Tugmaster, Craftmaster, Coxswain, or other senior enlisted person onboard the vessel;

(4) A licensed civilian mariner onboard a Military Sealift Command vessel; or

(5) 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.

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

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*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.  
1700.17–1700.21 [Reserved]  
1700.22 Distillation and reverse osmosis brine.  
1700.23 Elevator pit effluent.  
1700.24 [Reserved]  
1700.25 Gas turbine water wash.  
1700.26–1700.28 [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.  
1700.34–1700.37 [Reserved]  
1700.38 Welldeck 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 all vessels that sail seaward of waters subject to UNDS at least once per month, the discharge of AFFF is prohibited.

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

(1) The discharge of fluorinated AFFF is prohibited; and

(2) The discharges of non-fluorinated or alternative foaming agent are prohibited in port or in or near federally-protected waters, and must 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 all vessels that sail seaward of waters subject to UNDS at least once per month, the rinsing or pumping out of chain lockers is prohibited.

(d) For all vessels that do not sail seaward of waters subject to UNDS at least once per month, the rinsing or pumping out of chain lockers must occur as far from shore as possible and, if technically feasible, the rinsing or pumping out of chain lockers must not occur in federally-protected waters.

**§§ 1700.17–1700.21 [Reserved]**

**§ 1700.22 Distillation and reverse osmosis brine.**

The discharge of brine from the distillation system and the discharge of reverse osmosis reject water are prohibited if they come 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.**

(a) The direct discharge of elevator pit effluent is prohibited.

(b) 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:

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

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

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a 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

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

**§ 1700.24 [Reserved]**

**§ 1700.25 Gas turbine water wash.**

(a) The direct discharge of gas turbine water wash is prohibited.

(b) To the greatest extent practicable, gas turbine water wash must be collected separately and disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(c) 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:

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

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

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a 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

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

**§§ 1700.26–1700.28 [Reserved]**

**§ 1700.29 Non-oily machinery wastewater.**

The discharge of non-oily machinery wastewater must not contain any additives that are toxic or bioaccumulative in nature, and under no circumstances may oils, including oily mixtures, be discharged 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 1664a 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.**

The discharge of photographic laboratory drains is prohibited.

**§ 1700.31 Seawater cooling overboard discharge.**

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

(1) To the greatest extent practicable, minimize non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges when the vessel is in port.

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

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

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

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

(3) Fouling organisms must be removed from seawater piping on a regular basis. The discharge of fouling organisms removed during cleanings is prohibited.

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

(1) To the greatest extent practicable, minimize non-contact engine cooling water, hydraulic system cooling water, refrigeration cooling water and other seawater cooling overboard discharges when the vessel is in port.

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

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

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

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

(3) 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 must 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) (7 U.S.C. 136 et seq.) must be used in accordance with the FIFRA label. Pesticides or chemicals banned for use in the United States must not be discharged.

(b) To the greatest extent practicable, only the minimum amount of biofouling chemicals must 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, the discharge of fouling organisms removed during cleanings is prohibited.

**§ 1700.33 Small boat engine wet exhaust.**

(a) For the purposes of this section small boat engine wet exhaust discharges refers only to discharges from vessels that are less than 79 feet in length.

(b) 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.

(c) To the greatest extent practicable, low sulfur or alternative fuels must be used to reduce the concentration of pollutants in discharges from small boat engine wet exhaust.

(d) To the greatest extent practicable, use four-stroke engines instead of two-stroke engines for vessels generating small boat engine wet exhaust.

(e) 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.

**§§ 1700.34–1700.37 [Reserved]**

**§ 1700.38 Welldeck discharges.**

(a) Welldeck discharges that contain graywater from smaller vessels are prohibited.

(b) Welldeck discharges containing washdown from gas turbine engines are prohibited within three miles of the United States and to the greatest extent practicable must be discharged seaward of waters subject to UNDS.

(c) Welldeck discharges from equipment and vehicle washdowns must not contain garbage and must not contain oil in quantities that:

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

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

(3) Contain an oil content above 15 ppm as measured by EPA Method 1664a 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

(4) 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 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 must be generated and maintained in the ship's logs (main, engineering, and/or damage control) or an UNDS Record Book and must 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 must maintain complete records of the following information:

(1) Any inspection or recordkeeping requirement as specified in §§ 1700.14 through 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 through 1700.38. The information recorded must 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 the EPA, states, or the U.S. Coast Guard upon request. Any information made available upon request must be appropriately classified, as applicable, and handled in accordance with applicable legal requirements regarding national security.

**§ 1700.42 Non-compliance reports.**

The 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.

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