6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

40 CFR Part 1700

[EPA-HQ-OW-2016-0351; FRL-10009-46-OW]

RIN 2040-AF53

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

AGENCY: Environmental Protection Agency and Department of Defense.

ACTION: Final rule.

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 in 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 include the following: catapult water brake tank and post-launch retraction exhaust, controllable pitch propeller hydraulic fluid, deck runoff, firemain systems, graywater, hull coating leachate, motor gasoline and compensating discharge, sonar dome discharge, submarine bilgewater, surface vessel bilgewater/oil-water separator effluent, and underwater ship husbandry.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-HQ-OW-2016-0351. 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-2016-0351.

FOR FURTHER INFORMATION CONTACT: Katherine B. Weiler, Oceans and Coastal Management 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:

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(n) (33 U.S.C. 1322(n)). Section 325 of the National Defense Authorization Act of 1996 (NDAA), titled "Discharges from Vessels of the Armed Forces" (Public Law 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) & (n)).

B. Purpose of the Final Rule

The purpose of the statutory amendment for the establishment of the UNDS rules is 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)).

The final rule establishes 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 in the rule include the following: catapult water brake tank and post-launch retraction exhaust, controllable pitch propeller hydraulic fluid, deck runoff, firemain systems, graywater, hull coating leachate, motor gasoline and compensating discharge, sonar dome discharge, submarine bilgewater, surface vessel bilgewater/oil-water separator effluent, and underwater ship husbandry. However, the discharge performance standards do not become enforceable until after promulgation of regulations by DoD under CWA Section 312(n)(5)(C) to govern the design,

construction, installation, and use of a MPCD. CWA Section 312(n)(5)(C) requires DoD to promulgate the regulations as soon as practicable after the promulgation of the discharge performance standards, but not later than one year. Additionally, upon the effective date of regulations by DoD under CWA Section 312(n)(5)(C), CWA Section 312(n)(6)(A) provides that neither a state nor a political subdivision of a state may adopt or enforce any statute or regulation of the state (or the political subdivision) with respect to the discharge or design, construction, installation or use of any MPCD required to control discharges from 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 of vessels 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?

The final rule is applicable to discharges from a vessel of the Armed Forces operating in the navigable waters of the United States, including the territorial seas, and the contiguous zone (CWA Section 312(n)(8)(A)). The final rule applies in both fresh and marine waters and can include bodies of water such as rivers, lakes, and oceans. The preamble refers to these waters collectively as "waters subject to UNDS."

Sections 502(7), 502(8), and 502(9) of the CWA define the terms "navigable waters," "territorial seas," and "contiguous zone," respectively. The term "navigable waters" means waters of the United States including the territorial seas, and 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 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*. The contiguous zone extends seaward twelve miles from the baseline from which the breadth of the territorial sea is measured. The final rule is not applicable seaward of the contiguous zone.

E. Rulemaking Process

The UNDS rulemaking is a three-phase, joint rulemaking between the EPA and DoD. The first two phases are joint rulemakings between the EPA and DoD; the third phase is a DoD-only rulemaking.

Phase I

The EPA and DoD promulgated 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 that is 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 also identified the vessels with discharges to be regulated under UNDS. The Phase I Technical Development Document describes the range of vessels covered by UNDS which includes both active and inactive vessels. Inactive vessels are vessels owned by the Armed Forces that are not in operational status but are retained as mobilization assets or held in long-term storage for some other permanent disposition. The vessels are owned by the DoD, pending final disposition and as such are covered under UNDS.

The Phase I Technical Development Document also describes the 25 discharges that the EPA and DoD identified as requiring control with a MPCD and the 14 discharges that do not

require control. The 25 discharges requiring control include: 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). The 14 discharges that do not require control with a MPCD include: 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), states and political subdivisions of states are preempted from adoption or enforcement of any state or local statutes or regulations with respect to the 14 discharges that were identified as not requiring control, except as provided for in no-discharge zones (CWA Sections 312(n)(6)(A) and 312(n)(7)). In addition, CWA Section 312(n)(5)(D) authorizes the governor of any state to submit a petition to the EPA and DoD 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 requires the EPA and DoD to develop discharge performance standards for each of the 25 discharges identified in Phase I as requiring control. Development of the discharge performance standards required the EPA and DoD 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. CWA Section 312(n)(2)(B) directs the EPA and DoD to consider seven factors when promulgating the Phase II discharge performance standards: 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 authorizes the EPA and DoD to 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" through three separate rulemakings. The first batch of discharge performance standards was published on January 11, 2017 (82 FR 3173), and addressed 11 of the 25 discharges identified as requiring control in Phase I. The second batch of discharge performance standards, the subject of this final rule, addresses an additional 11 discharges

previously identified as requiring control. The EPA and DoD are preparing the third batch of performance standards to address the remaining three discharges (relating to different variations of ballast water systems), which will be proposed later.

In developing the Phase II discharge performance standards, the EPA and DoD referenced the 2013 National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) (78 FR 21938, April 12, 2013) and the 2014 NPDES Small Vessel General Permit (sVGP) (79 FR 53702, September 10, 2014) (hereafter referred to collectively as the NPDES VGPs) as a baseline for each comparable discharge incidental to the normal operation of a vessel of the Armed Forces. Geographically, the NPDES VGPs applied seaward only to the CWA's three-mile territorial sea and only to discharges incidental to the normal operation of non-military and non-recreational vessels. The NPDES VGPs included effluent limits that are based on both the technology available to treat pollutants (i.e., technology-based effluent limitations), and limits intended to be protective of the designated uses of the receiving waters (i.e., water quality-based effluent limits), including both non-numeric and numeric limitations. Using the NPDES VGPs as a "reasonable and practicable" baseline to develop 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. Additional information on NPDES permitting can be found on-line at *http://www.epa.gov/npdes/*.

Phase III

CWA Section 312(n)(4) requires DoD within one year of finalization of Phase II and in consultation with the EPA and the Secretary of the Department in which the U.S. Coast Guard is operating, to promulgate Phase III UNDS regulations governing the design, construction, installation, and use of MPCDs necessary to meet the Phase II 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 final Phase II discharge performance standards (CWA Section 312 (n)(8)). 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 enforces 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 Sections 312(k) and (n)(9)).

In addition, as of the effective date of the Phase III regulations, neither a state nor political subdivision of a 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)(7)). 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. CWA Section 312(n)(7) provides for the establishment of no-discharge zones and the Phase I UNDS regulations established the criteria and procedures for establishing no-discharge zones (40 CFR 1700.9 and 40 CFR 1700.10).

The statute also requires the EPA and DoD to review the UNDS determinations and standards every five years and, if necessary, to revise them based on significant new information. Specifically, CWA Sections 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) & 40 CFR 1700.11).

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

During the development of the proposed rule and the final 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. Documentation of the consultations is in the administrative docket for the rulemaking.

G. Supporting Documentation

The rule is supported by the "Technical Development Document Phase I Uniform National Discharge Standards 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," the "2013 Final Issuance of the National Pollutant Discharge Elimination Vessel General Permit Fact Sheet," the "Final 2014 Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet," the "2014 Final Issuance of National Pollutant Discharge Elimination System Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less than 79 Feet Fact Sheet," the "October 2016 Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II Batch Two Proposed Rule," 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 "Biological Evaluation for the Uniform National Discharge Standards Program Phase II - Batch Two," and the "National Consistency Determination: Uniform National Discharge Standards Program for Phase II Batch Two Discharges." These documents, along with other supporting technical and scientific documents are available from the EPA Water Docket, Docket No. EPA-HQ-OW-2016-0351 (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:// 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, and took into the consideration the seven statutory factors listed in CWA Section 312(n)(2)(B). These seven statutory factors include: 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, which include technology-based and water quality-based effluent limitations, served as a sound 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 included in this rule; 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, nutrients, bacteria or pathogens (e.g., *E. coli* and fecal coliforms), oil and grease, metals, most conventional pollutants (e.g., organic matter, biochemical oxygen demand, 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 included in this rule, 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 the "Technical Development Document Phase I Uniform National Discharge Standards for Vessels of the Armed Forces."

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 would 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 NPDES VGPs; 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 final rule adds UNDS definitions to 40 CFR part 1700. Specifically, the final rule defines the following terms: Great Lakes; minimally-toxic soaps, cleaners, and detergents; phosphate-free soaps, cleaners, and detergents; and State. These definitions clarify, simplify, or improve understanding of what the EPA and DoD intended in establishing the discharge performance standards. Some of the definitions are slightly different from the definitions established under the NPDES VGPs to improve clarity and understanding.

III. UNDS Performance Standards

This section describes the discharge performance standards determined to be reasonable and practicable to mitigate the adverse impacts to the marine environment for the 11 discharges. 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 will 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

any particular discharge performance standard.

A. Catapult Water Brake Tank and Post-Launch Retraction Exhaust

The performance standards prohibit the discharge of catapult water brake tank effluent. In addition, the number of post-launch retractions must be limited to the minimum required to test and validate the system and to conduct qualification and operational training.

B. Controllable Pitch Propeller Hydraulic Fluid

The performance standards require that the protective seals on controllable pitch propellers (CPPs) be maintained in good operating order to minimize the leakage of hydraulic fluid. In addition, to the greatest extent practicable, maintenance activities on CPPs should be conducted when a vessel is in drydock. If maintenance and repair activities must occur when the vessel is not in drydock, appropriate spill response equipment (e.g., oil booms) must be used to contain and clean any oil leakage. The discharge of CPP hydraulic fluid 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 parts per million (ppm) as measured by EPA Method 1664a (as defined in 40 CFR 136.3) 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.

C. Deck Runoff

The performance standards prohibit flight deck washdowns and require minimization of other deck washdowns while in port and in federally-protected waters. Additionally, before non-flight deck washdowns occur, all exposed decks must be broom cleaned and on-deck debris,

garbage, paint chips, residues, and spills must be removed, collected, and disposed of onshore in accordance with any applicable solid waste or hazardous waste management and disposal requirements.

If a deck washdown or above water line hull cleaning will create a discharge, the washdown or above water line cleaning must be conducted with minimally-toxic and phosphate-free soaps, cleaners, and detergents. The use of soaps that are labeled as toxic is prohibited. All soaps and cleaners must be used as directed by the label. Furthermore, soaps, cleaners, and detergents should not be caustic and must be biodegradable.

Additionally, where feasible, machinery on deck must have coamings or drip pans where necessary to collect any oily discharge that may leak from machinery and prevent spills. The drip pans must be drained to a waste container for proper disposal onshore in accordance with any applicable oil and hazardous substance management and disposal requirements.

The presence of floating solids, visible foam, halogenated phenol compounds, and dispersants and surfactants in deck washdowns must be minimized. Topside surfaces and other above-water-line portions of the vessel must be well-maintained to minimize the discharge of rust and other corrosion byproducts, cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior topside surface preservation. Residual paint droplets entering the water must be minimized when conducting maintenance painting. The discharge of unused paint is prohibited. Paint chips and unused paint residues must be collected and disposed of onshore in accordance with applicable solid waste and hazardous substance management and disposal requirements.

When vessels conduct underway fuel replenishment, scuppers must be plugged to prevent the discharge of oil. Any oil spilled must be cleaned, managed, and disposed of onshore in

accordance with any applicable onshore oil and hazardous substance management and disposal requirements.

D. Firemain Systems

The firemain system discharges to which UNDS applies include only the seawater pumped through the firemain system for firemain testing, maintenance, and training, and to supply water for the operation of certain vessel systems, rather than to operational firefighting discharges generally. The performance standards require minimization of discharges from firemain systems during testing and inspection and to the greatest extent practicable, firemain system maintenance and training must be conducted outside of port and as far away from shore as possible. In addition, firemain system effluent must not be discharged in federally-protected waters except when needed to comply with anchor washdown requirements in Subpart 1700.16 (Chain locker effluent). Firemain system effluent may be employed for secondary uses and discharged without MPCD controls if the intake comes directly from the surrounding waters or potable water supplies.

E. Graywater

The performance standards require that cooking oils (e.g., from deep fryers), including animal fats and vegetable oils, must not be intentionally disposed through graywater systems. The performance standards further require that the addition of incidental quantities of cooking oils (e.g., associated with washing and rinsing pots and dishes) to the graywater system must be minimized when the vessel is within three miles of shore. The performance standards require that graywater discharges 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 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. In addition, minimally-toxic soaps, cleaners and detergents and phosphate-free soaps, cleaners, and detergents must be used in the galley, scullery, and laundry. These soaps, cleaners, and detergents should also be free from bioaccumulative compounds and not lead to extreme shifts in the receiving water pH (i.e., pH to fall below 6.0 or rise above 9.0).

For vessels designed with the capacity to hold graywater, the performance standards further require that graywater must not be discharged in federally-protected waters or the Great Lakes. In addition, such vessels are prohibited from discharging graywater within one mile of shore if an onshore facility is available and use of such a facility is reasonable and practicable. When an onshore facility is either not available or when use of such a facility is not reasonable and practicable (e.g., when the vessel must operate continuously within one mile of shore resulting in graywater generation that exceeds the vessel's holding capacity) production and discharge of graywater must be minimized within one mile of shore.

For vessels that do not have the capacity to hold graywater, graywater production must be minimized in federally-protected waters or the Great Lakes. In addition, such vessels are prohibited from discharging graywater within one mile of shore if an onshore facility is available and use of such a facility is reasonable and practicable. When an onshore facility is either not available or use of such a facility is not reasonable and practicable (e.g., when the vessel must operate continuously within one mile of shore resulting in graywater generation), production and discharge of graywater must be minimized within one mile of shore.

F. Hull Coating Leachate

The performance standards require that antifouling hull coatings subject to FIFRA (7 U.S.C 136 *et seq.*) must be applied, maintained, and removed in a manner consistent with requirements on the coatings' FIFRA label. The performance standards also prohibit the use of biocides or toxic materials banned for use in the United States (including those on EPA's List of Banned or Severely Restricted Pesticides). These performance standards apply to all vessels of the Armed Forces, including vessels with a hull coating applied outside of the United States. Antifouling hull coatings must not contain tributyltin (TBT) or other organotin compounds as a hull coating biocide. Antifouling hull coatings may contain small quantities of organotin compounds when the organotin is used as a chemical catalyst and is not present above 2,500 milligrams of total tin per kilogram of dry paint film. Also, any organotin antifouling hull coatings used must be designed to not slough or peel from the vessel hull. In addition, the standards require the use of non-biocidal alternatives to copper coatings to the greatest extent practicable. The performance standards also require to the greatest extent practicable, the use of antifouling hull coatings with the lowest effective biocide release rates, rapidly biodegradable components (once separated from the hull surface), or use of non-biocidal alternatives, such as silicone coatings. Finally, the performance standards require, to the greatest extent practicable, avoiding the use of antifouling hull coatings on vessels that are regularly removed from the water and unlikely to accumulate hull growth.

G. Motor Gasoline and Compensating Discharge

The performance standards require that the discharge of motor gasoline and compensating effluent 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 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. In addition, if an oily sheen is observed, the performance standards require that any spill or overflow of oil must be cleaned up, recorded, and reported to the National Response Center immediately. The discharge of motor gasoline and compensating discharge must be minimized in port and is prohibited in federally-protected waters.

H. Sonar Dome Discharge

The performance standards require that the discharge of water from inside the sonar dome for maintenance activities is prohibited unless the use of a drydock for the maintenance activity is not feasible (e.g., when there is no drydock available to support the maintenance activity, or when the vessel's availability would be impacted to prevent the vessel from meeting its operational requirements). However, the water inside the sonar dome may be released for equalization of pressure between the interior and exterior of the dome. This would include the discharge of water required to protect the shape, integrity, and structure of the sonar dome due to internal and external pressures and forces. Under the performance standards, a biofouling chemical that is bioaccumulative should not be applied to the exterior of a sonar dome when a non-bioaccumulative alternative is available.

I. Submarine Bilgewater

The performance standards require that the discharge of submarine bilgewater 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 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. In addition, the discharge of submarine bilgewater must not contain dispersants, detergents, emulsifiers, chemicals, or other substances added for the purpose of removing the appearance of a visible sheen. The performance standard does not, however, prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures. The discharge of submarine bilgewater also must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants, or other additives (excluding any dispersants or surfactants) may be used to enhance oil-water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical composition of the oils in the discharge. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

The performance standards prohibit submarine bilgewater discharges while the submarine is in port, if the port has the capability to collect and transfer the bilgewater to an onshore facility. If the submarine is not in port, then any such discharge must be minimized and discharged as far from shore as technologically feasible. The performance standards also require that submarine bilgewater discharges be minimized in federally-protected waters. Finally, the standards require that management practices minimize leakage of oil and other harmful pollutants into the bilge.

J. Surface Vessel Bilgewater/Oil-Water Separator Effluent (OWSE)

The performance standards prohibit the discharge of bilgewater from surface vessels equipped with an oil-water separator and require that any discharge of oil-water separator

effluent pass through an oil-content monitor. All surface vessels greater than 400 gross tons must be equipped with an oil-water separator. If measurements for gross tonnage are not available to determine whether the prohibition against surface vessel bilgewater discharge applies for a particular vessel, full displacement measurements may be used instead. The performance standards also require that the discharge of oil-water separator effluent not occur in port, if the port has the capability to collect and transfer oil-water separator effluent to an onshore facility. In addition, the discharge of oil-water separator effluent must be minimized within one mile of shore, must occur at speeds greater than six knots if the vessel is underway, and must be minimized in federally-protected waters.

For surface vessels not equipped with an oil-water separator, the performance standards require that bilgewater must not be discharged if the vessel has the capability to collect, hold, and transfer to an onshore facility.

In addition, the discharge of bilgewater/oil-water separator effluent must not contain dispersants, detergents, emulsifiers, chemicals, or other substances added for the purpose of removing the appearance of a visible sheen. The performance standard does not, however, prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures. The discharge of surface vessel bilgewater/oil-water separator effluent may only contain substances that are produced in the normal operation of a vessel. For the discharge of oil-water separator effluent, oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil/water separation during processing only if such solidifiers, flocculants, or other additives are minimized and do not alter the chemical composition of the oils in the discharge. Solidifiers,

flocculants, or other additives must not be directly added to, or otherwise combined with, the water in the bilge.

The discharge of surface vessel bilgewater/oil-water separator effluent 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 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.

When a visible sheen is observed as a result of a surface vessel bilgewater/oil-water separator effluent discharge, the discharge must be suspended immediately until the problem is corrected. Any spill or overflow of oil or other engine fluids to waters subject to UNDS must be cleaned, recorded, and reported immediately to the National Response Center. The surface vessel must also employ management practices to minimize leakage of oil and other harmful pollutants into the bilge. Such practices may include regular inspection and maintenance of equipment and remediation of oil spills or overflows into the bilge using oil-absorbent or other spill clean-up materials.

K. Underwater Ship Husbandry

For vessels greater than 79 feet in length, the performance standards require that to the greatest extent practicable, vessel hulls with antifouling hull coatings must not be cleaned within 90 days after the antifouling coating application and vessel hulls with a copper-based antifouling coating must not be cleaned within 365 days after the antifouling coating application.

In addition, vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling hull coatings and transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling hull coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements. Vessel hull and niche cleanings that occur when the vessel is in drydock are not subject to UNDS because the vessel is not waterborne and, therefore, any materials removed during a dry dock cleaning would not be subject to UNDS. Vessel hull and niche cleanings that occur when the vessel is waterborne are considered to be in-water cleanings. For in-water cleanings, the performance standards require that cleanings be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms (e.g., use less abrasive techniques and soft brushes to the greatest extent practicable) including the use of shore-side or in-water capture technology as available. Shore-side or in-water cleaning systems that capture some or all of the removed materials can reduce the release of fouling organisms and paint particles into the surrounding environment and allow for collection and onshore disposal of solids scrubbed from vessel hulls and niches. Regardless, the discharge of solid, semi-solid, or liquid matter associated with underwater ship husbandry into waters subject to UNDS from the operation of a shore-side or in-water cleaning system represents a discharge incidental to the normal operation of a vessel of the Armed Forces as defined in 40 CFR 1700.4 because such system is used to maintain and clean hulls and niches, while the vessel is waterborne. Vessel hull cleanings must also adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

For vessels less than 79 feet in length, the performance standards require that, to the greatest extent practicable, vessel hulls with antifouling hull coatings must not be cleaned within 90 days after the antifouling coating application. In addition, vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling hull coatings and transport of fouling organisms. As with larger vessels, rigorous vessel hull cleanings must take place, to the greatest extent practicable, in drydock or at a land-based facility where the removed fouling organisms or spent antifouling hull coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements. The performance standards also require that vessel hull and niche cleanings be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms (e.g., use less abrasive techniques and soft brushes to the greatest extent practicable) including the use of capture technology as available. Shore-side or in-water cleaning systems that capture some or all of the removed materials can reduce the release of fouling organisms and paint particles into the surrounding environment and allow for collection and onshore disposal of solids scrubbed from vessel hulls and niches. Regardless, the discharge of solid, semi-solid, or liquid matter associated with underwater ship husbandry into waters subject to UNDS from the operation of a shore-side or in-water cleaning system represents a discharge incidental to the normal operation of a vessel of the Armed Forces as defined in 40 CFR 1700.4 because such system is used to maintain and clean hulls and niches, while the vessel is waterborne. Vessel hull cleanings must also adhere to any applicable cleaning requirements found on the coatings' FIFRA label and vessels less than 79 feet in length require inspection of the hull prior to transport overland to a different body of water to control invasive species.

IV. Additional Information in the Final Rule

This section provides an overview of the additional amendments for 40 CFR part 1700. These changes include the reservation of sections for the remaining discharge standards.

1. Reservation of Sections

As noted previously, the EPA and DoD are promulgating the final Phase II standards in three batches. For the purpose of proposing the remaining batch, the rule reserves the following sections for a subsequent batch:

Section 1700.17 Clean Ballast

Section 1700.18 Compensated Fuel Ballast

Section 1700.21 Dirty Ballast

V. Changes and Improvements since the Proposed Rule

A. Public Comment

On October 7, 2016, the EPA and DoD proposed discharge performance standards for the 11 discharges, with a 60-day public comment period that closed on December 6, 2016. The EPA and DoD consider the public comment period important to creating a rule that is readily understandable and useful to the public. The EPA and DoD received one comment on the proposed rule during the comment period, which expressed support for finalizing the rule. The public comment received can be viewed under Docket No. EPA-HQ-OW-2013-0351.

B. Modifications to Proposed Standards

The final rule includes minor modifications to the text of the proposed definitions and standards to make the final language clearer and more concise. These changes to the definitions and standards are intended to be non-substantive and to clarify, simplify, or improve

understanding and readability of the definitions and discharge performance standards. There are no technical changes to the 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 deemed a significant regulatory action by the Office of Management and Budget (OMB) and was therefore not submitted to the OMB for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden because UNDS Phase II does not create any additional collection of information beyond that information collection already specified under the Phase I of UNDS. 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.

D. Regulatory Flexibility Act

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

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Executive Order 13132, titled "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 or their representative national organizations during the development of regulatory policies, including the proposed regulation.

The EPA and DoD conclude that the rule, once operationalized in Phase III, will have federalism implications. When DoD promulgates the Phase III regulations, adoption and enforcement of new or existing state or local regulations for the discharge or the design, construction, installation or use of any MPCD required to control discharges from a vessel of the Armed Forces will be preempted. Accordingly, the EPA and DoD provide the following

federalism summary impact statement (FSIS) as required by Section 6(c) of Executive Order 13132.

During Phase I of UNDS, the EPA and DoD conducted two rounds of consultation meetings (i.e., outreach briefings) to allow states and local governments to have meaningful and timely input into the development of the rulemaking process. 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 of UNDS, the EPA and DoD consulted with intergovernmental associations in the process of developing the proposed regulation. On March 9, 2016, the EPA held a Federalism consultation in Washington, DC, and invited representatives from 10 key national organizations that represent state and local government associations, as well as groups representing intergovernmental water professionals, 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 proposed discharge performance standards for the 25 discharges identified in Phase I as requiring control. During the Federalism consultation period, the EPA and DoD did not receive any substantive comments from state and local government entities.

As required by Section 8(a) of Executive Order 13132, EPA included a certification from its Federalism Official stating that EPA had met the Executive Order's requirements in a

meaningful and timely manner. A copy of this certification is included in the official record for this final action.

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

This action does not have tribal implications as specified in Executive Order 13175. This action will not impact vessels operated by tribes because the final 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 on or near tribal waters. The EPA hosted a National Teleconference on March 23, 2016, in order to obtain meaningful and timely input during the development of the proposed discharge standards. The EPA and DoD informed the tribal representatives that the NPDES VGPs effluent limitations would be used 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.

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 determined that the environmental health or safety risks addressed by this action do not 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 adverse 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 it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action involves technical standards in some but not all of the performance standards. Some of the performance standards 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. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) requires that each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs.

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 Management Plans for the state and territorial coastal zones, that encompass waters where discharges from vessels of the Armed Forces would be regulated by UNDS. Following proposal of the UNDS Phase II Batch Two performance standards on October 7, 2016, the EPA and DoD provided 35 states and territories with the EPA and DoD's November 2018 "National Consistency Determination: Uniform National Discharge Standards Program for Phase II Batch Two Discharges." In response, 16 states and territories provided concurrence, 17 states and territories did not respond, so concurrence was conclusively presumed, and both Connecticut and North Carolina provided conditional concurrence. Connecticut and North Carolina requested that the UNDS Phase II rules incorporate certain

requirements on discharges into waters under their respective jurisdictions. The DoD responded in writing to Connecticut and North Carolina, explaining that applying different requirements in each coastal water body would conflict with the statutory requirements set forth in CWA Section 312(n), to include the statutory prohibition on the adoption or enforcement of any state laws with respect to regulated discharges.

L. 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 published regulations implementing ESA Section 7 at 50 CFR Part 402. The regulations provide that a federal agency (such as the EPA or 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 EPA and DoD began informal communications with the Services in July 2017. The informal consultation process included multiple steps: briefings with the Services on the content of the rulemaking; discussions of the proposed outline and methodological approach for development of the performance standards; information exchanges and requests on current species lists, rulemaking schedule, and approach to the biological evaluation; and ultimately the submission of a Biological Evaluation to the Services on November 16, 2018. The Biological Evaluation described the anticipated effects of the Uniform National Discharge Standards Batch Two (this final rule) on aquatic and water-

dependent species listed as threatened or endangered under the ESA and their designated critical habitat. The Biological Evaluation concluded that the issuance of the final rule establishing performance standards for the UNDS Batch Two Rule once implemented, "may affect" but is "not likely to adversely affect" species listed or proposed for listing under the ESA, nor adversely modify designated critical habitat or critical habitat proposed for designation.

On March 26, 2019, the FWS concurred in that determination for species and habitat within that agency's ESA jurisdiction. On December 3, 2018, the NMFS initiated formal consultation due to the scope and nature of the discharges regulated under UNDS Batch Two Rule. On November 15, 2019, the NMFS issued a Biological Opinion determining that the action "may affect" and is "likely to adversely affect," but is not likely to jeopardize the continued existence of, species that are listed or proposed for listing. The Biological Opinion concluded that hull coating leachate and underwater ship husbandry discharges may result in non-lethal incidental take of 21 listed species that occur in ports and harbors with high populations of vessels of the Armed Forces. The Biological Opinion also concluded that hull coating leachate and underwater ship husbandry discharges are not likely to destroy or adversely modify designated critical habitat for listed species. The incidental take statement in the Biological Opinion provides non-discretionary reasonable and prudent measures to minimize the amount and extent of incidental take from these two discharges by maintaining or reducing the area of impact. It also provides terms and conditions to implement the reasonable and prudent measures.

M. Executive Order 13112: Invasive Species

Executive Order 13112, titled "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 developed for each of the 11 performance standards promulgated in today's rule, the EPA and DoD considered the control of invasive species when developing the discharge performance standard (see Section II). Some of the performance standards provided opportunities for prevention, detection, control, and monitoring of the introduction of invasive species. For example, the underwater ship husbandry discharge performance standard requires the inspection of all vessels under 79 feet in length for the detection and removal of invasive species prior to transport overland from one body of water to another. This requirement as well as others help to prevent or control the introduction of invasive species into the receiving waters.

N. Executive Order 13089: Coral Reef Protection

Executive Order 13089, titled "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. The discharge performance standards in this UNDS Batch II rulemaking 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.

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

Executive Order 12898, titled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994) requires all federal agencies to identify actions that may have a disproportionate negative impact on the human health or the environment for minority populations, low-income populations and/or indigenous peoples. The EPA and DoD determined that this action does not have disproportionately high and adverse human health or environmental effects. The discharge performance standards only apply to vessels of the Armed Forces and reduce adverse impacts to the aquatic environment.

P. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of Congress and to 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.

Andrew Wheeler

Administrator,

Environmental Protection Agency.

Charles A. Williams

Assistant Secretary of the Navy (Energy, Installations, and Environment).

For the reasons stated in the preamble, amend title 40, chapter VII, of the Code of Federal Regulations 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. Section 1700.3 is amended by adding in alphabetical order definitions of "Great Lakes," "Minimally-toxic soaps, cleaners, and detergents," "Phosphate-free soaps, cleaners, and detergents," and "State" to read as follows:

§ 1700.3 Definitions.

* * * * *

Great Lakes means waters of the United States extending to the international maritime boundary with Canada in Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Marys River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the international maritime boundary with Canada).

* * * * *

Minimally-toxic soaps, cleaners, and detergents means any substance or mixture of substances which has an acute aquatic toxicity value (LC50) corresponding to a concentration greater than 10 parts per million (ppm) and does not produce byproducts with an acute aquatic toxicity value (LC50) corresponding to a concentration less than 10 ppm. Minimally-toxic soaps, cleaners, and detergents typically contain little to no nonylphenols.

* * * * *

Phosphate-free soaps, cleaners, and detergents means any substance or mixture of substances which contain, by weight, 0.5% or less of phosphates or derivatives of phosphates.

* * * * *

State means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

* * * * *

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

3. *ADD* § 1700.15 to read as follows:

§ 1700.15 Catapult water brake tank & post-launch retraction exhaust.

(a) Discharges of catapult water brake tank effluent are prohibited.

(b) The number of post-launch retractions must be limited to the minimum number required to test and validate the system and conduct qualification and operational training.

4. Add § 1700.19 to read as follows:

§ 1700.19 Controllable pitch propeller hydraulic fluid.

(a) The protective seals on controllable pitch propellers must be maintained to minimize the leaking of hydraulic fluid.

(b) To the greatest extent practicable, maintenance activities on controllable pitch propellers must be conducted when a vessel is in drydock. If maintenance and repair activities must occur when the vessel is not in drydock, appropriate spill response equipment (e.g., oil booms) must be used to contain and clean any oil leakage.

(c) The discharge of controllable pitch propeller hydraulic fluid 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 (as defined in 40 CFR 136.3) 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.

5. Add § 1700.20 to read as follows:

§ 1700.20 Deck runoff.

(a) Flight deck washdowns are prohibited.

(b) Minimize deck washdowns while in port and in federally-protected waters.

(c) Prior to performing a deck washdown, exposed decks must be broom cleaned and on-deck debris, garbage, paint chips, residues, and spills must be removed, collected, and disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(d) If a deck washdown or above water line hull cleaning will result in a discharge, it must be conducted with minimally-toxic and phosphate-free soaps, cleaners, and detergents. The use of soaps that are labeled toxic is prohibited. Furthermore, soaps, cleaners, and detergents should not be caustic and must be biodegradable. All soaps and cleaners must be used as directed by the label.

(e) Where feasible, machinery on deck must have coamings or drip pans, where necessary, to prevent spills and collect any oily discharge that may leak from machinery. The drip pans must be drained to a waste container for disposal onshore in accordance with any applicable oil and hazardous substance management and disposal requirements. The presence of floating solids, visible foam, halogenated phenol compounds, dispersants, and surfactants in deck washdowns must be minimized.

(f) Topside surfaces and other above water line portions of the vessel must be well maintained to minimize the discharge of rust (and other corrosion by-products), cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior topside surface preservation. Residual paint droplets entering the water must be minimized when conducting maintenance painting. The discharge of unused paint is prohibited. Paint chips and unused paint residues must be collected and disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(g) When vessels conduct underway fuel replenishment, scuppers must be plugged to prevent the discharge of oil. Any oil spilled must be cleaned, managed, and disposed of onshore in accordance with any applicable oil and hazardous substance management and disposal requirements.

6. Add § 1700.24 to read as follows:

§ 1700.24 Firemain systems.

(a) Firemain systems may be discharged for testing and inspections of the firemain system. To the greatest extent practicable, conduct maintenance and training outside of port and as far away from shore as possible. Firemain systems may be discharged in port for certification, maintenance, and training requirements if the intake comes directly from the surrounding waters or potable water supplies and there are no additions (e.g., aqueous film-forming foam) to the discharge.

(b) Firemain systems must not be discharged in federally-protected waters except when needed to washdown the anchor chain to comply with anchor washdown requirements in Subpart 1700.16.

(c) Firemain systems may be used for secondary uses if the intake comes directly from the surrounding waters or potable water supplies.

7. Add § 1700.26 to read as follows:

§ 1700.26 Graywater.

(a) For discharges from vessels that have the capacity to hold graywater:

(1) Graywater must not be discharged in federally-protected waters or the Great Lakes.

(2) Graywater must not be discharged within one mile of shore if an onshore facility is available and disposal at such a facility is reasonable and practicable.

(3) Production and discharge of graywater must be minimized within one mile of shore when an onshore facility is either not available or use of such a facility is not reasonable and practicable.

(b) For discharges from vessels that do not have the capacity to hold graywater:

(1) Production and discharge of graywater must be minimized in federally-protected waters or the Great Lakes.

(2) Graywater must not be discharged within one mile of shore if an onshore facility is available and disposal at such a facility is reasonable and practicable.

(3) Production and discharge of graywater must be minimized within one mile of shore when an onshore facility is either not available or use of such a facility is not reasonable and practicable.

(c) Large quantities of cooking oils (e.g., from a deep fat fryer), including animal fats and vegetable oils, must not be added to the graywater system. Small quantities of cooking oils (e.g., from pot and dish rinsing) must be minimized if added to the graywater system within three miles of shore.

(d) Minimally-toxic soaps, cleaners, and detergents and phosphate-free soaps, cleaners, and detergents must be used in the galley, scullery, and laundry. These soaps, cleaners, and detergents should also be free from bioaccumulative compounds and not lead to extreme shifts in the receiving water pH. For purposes of this subparagraph, extreme shifts means causing the receiving water pH to fall below 6.0 or rise above 9.0 as a direct result of the discharge.

(e) The discharge of graywater 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 (as defined at 40 CFR 136.3) 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.

8. Add § 1700.27 to read as follows:

§ 1700.27 Hull coating leachate.

(a) Antifouling hull coatings subject to registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C 136 *et seq.*) must be applied, maintained, and removed in a manner consistent with requirements on the coatings' FIFRA label.

(b) Antifouling hull coatings not subject to FIFRA registration (i.e., exempt or not produced for sale and distribution in the United States) must not contain any biocides or *toxic materials* banned for use in the United States. This performance standard applies to all vessels, including vessels with a hull coating applied outside the United States.

(c) Antifouling hull coatings must not contain tributyltin (TBT).

(d) Antifouling hull coatings must not contain any organotin compounds when the organotin is used as a biocide. Antifouling hull coatings may contain small quantities of organotin compounds other than tributyltin (e.g., dibutyltin) when the organotin is acting as a chemical catalyst and not present above 2,500 milligrams total tin per kilogram of dry paint film. In addition, any antifouling hull coatings containing organotin must be designed to not slough or peel from the vessel hull.

(e) Antifouling hull coatings that contain TBT or other organotin compounds that are used as a biocide must be removed or an overcoat must be applied.

(f) Incidental amounts of antifouling hull coating discharged after contact with other hard surfaces (e.g., moorings) are permissible.

(g) To the greatest extent practicable, use non-copper based and less toxic antifouling hull coatings. To the greatest extent practicable, use antifouling hull coatings with the lowest effective biocide release rates, rapidly biodegradable components (once separated from the hull surface), or use non-biocidal alternatives, such as silicone coatings.

(h) To the greatest extent practicable, avoid use of antifouling hull coatings on vessels that are regularly removed from the water and unlikely to accumulate hull growth.

9. Add § 1700.28 to read as follows:

§ 1700.28 Motor gasoline and compensating discharge.

(a) The discharge of motor gasoline and compensating effluent 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 (as defined at 40 CFR136.3) 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.

(b) The discharge of motor gasoline and compensating effluent must be minimized in port. If an oily sheen is observed, any spill or overflow of oil must be cleaned up, recorded, and reported to the National Response Center immediately.

(c) The discharge of motor gasoline and compensating effluent is prohibited in federally-protected waters.

10. Add § 1700.34 to read as follows:

§ 1700.34 Sonar dome discharge.

(a) The water inside the sonar dome must not be discharged for maintenance activities unless the use of a drydock for the maintenance activity is not feasible.

(b) The water inside the sonar dome may be discharged for equalization of pressure between the interior and exterior of the dome.

(c) A biofouling chemical that is bioaccumulative should not be applied to the exterior of a sonar dome when a non-bioaccumulative alternative is available.

11. Add § 1700.35 to read as follows:

§ 1700.35 Submarine bilgewater.

The discharge of submarine bilgewater:

(a) 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 parts per million (ppm) as measured by EPA Method 1664a (as defined at 40 CFR 136.3) 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.

(b) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances added for the purposes of removing the appearance of a visible sheen. This performance standard

does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(c) Must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil-water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical makeup of the oils being discharged. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge. Additionally, the vessel must employ management practices that will minimize the leakage of oil and other harmful pollutants into the bilge.

(d) Must not occur in port if the port has the capability to collect and transfer the submarine bilgewater to an onshore facility.

(e) Must be minimized and, if technologically feasible, discharged as far from shore as possible.

(f) Must be minimized in federally-protected waters.

12. Add § 1700.36 to read as follows:

§ 1700.36 Surface vessel bilgewater/oil-water separator effluent.

(a) All surface vessels must employ management practices that will minimize leakage of oil and other harmful pollutants into the bilge.

(b) Surface vessels equipped with an oil-water separator must not discharge bilgewater and must only discharge oil-water separator effluent through an oil-content monitor consistent with paragraph (c) of this section. All surface vessels greater than 400 gross tons must be

equipped with an oil-water separator. Surface vessels not equipped with an oil-water separator must only discharge bilgewater consistent with paragraph (d) of this section.

(c) The discharge of oil-water separator effluent:

(1) Must not contain oil in quantities that:

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

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

(iii) Contain an oil content above 15 ppm as measured by EPA Method 1664a (as defined at 40 CFR 136.3) 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

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

(2) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances added for the purposes of removing the appearance of a visible sheen. This performance standard does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(3) Must only contain substances that are produced in the normal operation of a vessel. Oil solidifiers, flocculants or other additives (excluding any dispersants or surfactants) may be used to enhance oil-water separation during processing in an oil-water separator only if such solidifiers, flocculants, or other additives are minimized in the discharge and do not alter the chemical make-up of the oils being discharged. Solidifiers, flocculants, or other additives must not be directly added, or otherwise combined with, the water in the bilge.

(4) Must not occur in port if the vessel has the capability to collect and transfer oil-water separator effluent to an onshore facility.

(5) Must be minimized within one mile of shore.

(6) Must occur while sailing at speeds greater than six knots, if the vessel is underway.

(7) Must be minimized in federally-protected waters.

(d) The discharge of bilgewater (i.e., wastewater from the bilge that has not been processed through an oil-water separator):

(1) Must not occur if the vessel has the capability to collect, hold, and transfer bilgewater to an onshore facility.

(2) Notwithstanding the prohibition of the discharge of bilgewater from vessels that have the capability to collect, hold, and transfer bilgewater to an onshore facility; the discharge of bilgewater:

(i) Must not contain dispersants, detergents, emulsifiers, chemicals, or other substances added for the purposes of removing the appearance of a visible sheen. This performance standard does not prohibit the use of these materials in machinery spaces for the purposes of cleaning and maintenance activities associated with vessel equipment and structures.

(ii) Must only contain substances that are produced in the normal operation of a vessel. Routine cleaning and maintenance activities associated with vessel equipment and structures are considered to be normal operation of a vessel.

(iii) 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 1664a (as defined at 40CFR 136.3) 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.

(iv) Must be suspended immediately if a visible sheen is observed. Any spill or overflow of oil or other engine fluids must be cleaned up, recorded, and reported to the National Response Center immediately.

13. Add § 1700.37 to read as follows:

§ 1700.37 Underwater ship husbandry.

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

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Prior to the transport of the vessel overland from one body of water to another, vessel hulls must be inspected for any visible attached living organisms. If fouling organisms are found,

they must be removed and disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

(4) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible. Residues filtered, precipitated, or otherwise removed by any vacuum technology must be disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

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

(1) To the greatest extent practicable, vessel hulls with an antifouling hull coating must not be cleaned within 90 days after the antifouling coating application. To the greatest extent practicable, vessel hulls with copper-based antifouling coatings must not be cleaned within 365 days after coating application.

(2) Vessel hulls must be inspected, maintained, and cleaned to minimize the removal and discharge of antifouling coatings and the transport of fouling organisms. To the greatest extent practicable, rigorous vessel hull cleanings must take place in drydock or at a land-based facility where the removed fouling organisms or spent antifouling coatings can be disposed of onshore in accordance with any applicable solid waste or hazardous substance management and disposal requirements.

(3) Vessel hull cleanings must be conducted in a manner that minimizes the release of antifouling hull coatings and fouling organisms, including:

(i) Adhere to any applicable cleaning requirements found on the coatings' FIFRA label.

(ii) Use soft brushes or less abrasive cleaning techniques to the greatest extent practicable.

(iii) Use hard brushes only for the removal of hard growth.

(iv) Use a vacuum or other collection/control technology, when available and feasible. Residues filtered, precipitated, or otherwise removed by any vacuum technology must be disposed of onshore in accordance with any applicable solid waste and hazardous substance management and disposal requirements.

[FR Doc. 2020-12571 Filed: 7/16/2020 8:45 am; Publication Date: 7/17/2020]