

**Establishing No-discharge Zones (NDZs)  
under the Clean Water Act §312**

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**Draft for comment  
February 2008**

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**ESTABLISHING NO-DISCHARGE ZONES (NDZs)  
UNDER CLEAN WATER ACT SECTION 312**

**ICR # 1791.05**

**OMB Control # 2040-0187**

**PART A**

**Introduction**

This document responds to the requirements of the Paperwork Reduction Act. The purposes of the Paperwork Reduction Act of 1980 (P. L. 96-511) and implementing regulations (44 U.S.C. Chapter 35) are to: 1) minimize the Federal paperwork burden for small businesses, State and local governments, and other individuals; 2) minimize the Federal government's cost of collecting, maintaining, using, and disseminating information; and 3) maximize the usefulness of information collected by Federal agencies.

This application is made by the Oceans and Coastal Protection Division in the Office of Water, U.S. Environmental Protection Agency (EPA). As will be demonstrated in this application, the proposed information collection activities are accomplished by the least burdensome and costly means; are not duplicated by other sources; and are pivotal to EPA's responsibilities in establishing No-discharge Zones (NDZs) for treated or untreated vessel sewage discharges and for discharges incidental to the normal operation of Armed Forces vessels under Clean Water Act (CWA) section 312.

**Organization of Information Collection Request Statement**

This document follows the format for Information Collection Requests (ICR) outlined in the Information Collection Review Handbook (Office of Management and Budget, 1989) and the Instructions for Standard Form 83 (revised version dated September 1983). No exceptions to this format are taken. Those topics identified in the Information Collection Review Handbook, which are not relevant to this application, are noted and the basis for this determination stated. EPA's Information Resources Management Policy Manual (July 1987), Regulation Development in EPA (September 1992), and EPA's Instructions for Preparing Information Collection Requests (June 1992) also guided the development of this document. This document combines two previous ICRs developed for the implementation of different programs under Section 312 of CWA:

- . Establishment of No-discharge Zones for Discharges Incidental to the Normal Operation

of Armed Forces vessels under CWA Section 312(n).

. Establishment of No-discharge Zones for Vessel Sewage under CWA Section 312(f)(3) and (f)(4)(A) and (f)(4)(B).

### **Approach Taken in this Information Collection Request**

This ICR combines information collection analysis for activities associated with NDZ designations for vessel sewage and for incidental discharges from Armed Forces vessels. It addresses these activities separately in Chapters I and II. The term NDZ will be used to refer to the designation as it pertains to that chapter. For example, NDZs discussed in Chapter I refer to designations that prohibit the incidental discharges from Armed Forces vessels, and NDZs in Chapter II refer to those areas where the discharge of vessel sewage is prohibited.

Some of the information collection and record keeping requirements under this program are "borderline" relative to the requirements to prepare and submit an ICR as defined in the Information Collection Review Handbook. However, a conservative approach (i.e., overstate potential burden and costs) has been taken throughout this analysis, and all information collection and record keeping requirements associated with establishing NDZs have been described, regardless of the magnitude of the burden.

This ICR was developed based on program office knowledge of the process, a review of selected NDZ applications similar to those being called for under this ICR, a review of EPA's guidance on establishing NDZs under §312 of the Clean Water Act, a review of the literature on vessel discharge, and interviews with Federal and local officials working on vessel-discharge issues.

# **Chapter I. Supporting Statement for the Establishment of No-discharge Zones for Discharges Incidental to the Normal Operation of Armed Forces Vessels under CWA Section 312(n).**

## **SECTION 1: Identification of the Information Collection**

### **1(a): Title of the Information Collection**

Establishment of No-discharge Zones under Clean Water Act Section 312 (Renewal)

### **1(b): Short Characterization/Abstract**

Section 312(n) of the Clean Water Act (“Uniform National Discharge Standards for Vessels of the Armed Forces” or “UNDS”) calls for the promulgation of standards and regulations for the control of discharges (other than sewage) incidental to the normal operation of Armed Forces vessels. Once such regulations have been promulgated, States and their political subdivisions will be pre-empted from adopting or enforcing any of their own statutes or regulations regarding these discharges. However, No-discharge Zones (“NDZs”) may be established by either State prohibition or EPA prohibition following the procedures in proposed 40 CFR Part 139. The purpose of this chapter of the ICR is to discuss the information that will be required from a State if it decides to establish a NDZ by State prohibition or apply for a NDZ by EPA prohibition.

UNDS also provides that the Governor of any State may petition EPA and the Secretary of Defense to review any determination or standard promulgated under the UNDS program if there is significant new information that could reasonably result in a change to the determination or standard. This chapter of the ICR also discusses the information that will be required from a State if it decides to submit such a petition.

## **SECTION 2: Need for and Use of the Collection**

### **2(a): Need/Authority for the Collection**

1) *NDZ by State Prohibition:* In order for a State to prohibit a discharge incidental to the normal operation of an Armed Forces vessel, EPA must make the following determinations: I) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and ii) that the prohibition will

not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(A), 33 USC 1322(n)(7)(A)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.9(a).

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

3) *Petition for review*: A State may request that EPA and the Secretary of Defense review I) a determination of whether an UNDS discharge will require a control, or ii) a standard of performance for a control on an UNDS discharge, by submitting a petition which discusses significant new scientific and technical information that could reasonably result in a change to the determination or standard (see CWA section 312(n)(5)(D), 33 USC 1322(n)(5)(D)). The State must provide EPA this information and a discussion of how the information is relevant to one or more of the seven factors which EPA and the Secretary of Defense are required to consider in making these determinations and standards (see CWA section 312(n)(2)(B), 33 USC 1322(n)(2)(B)). These requirements are listed in proposed 40 CFR 1700.12 (see Attachment B).

## **2(b): Practical Utility/Users of the Data**

1) *NDZ by State Prohibition*: The information requested from the State will be used by EPA to make the determinations it is required to make by law in order for a State prohibition to go into effect.

2) *NDZ by EPA Prohibition*: The information requested from the State will be used by EPA to make the determinations it is required to make by law in order to establish a NDZ.

3) *Petition for review*: The information requested from the State will be used by EPA and the Secretary of Defense in order to review any determinations and standards promulgated under UNDS.

## **SECTION 3: Non-duplication, Public Notice, Consultations, and Other Collection Criteria**

### **3(a): Non-duplication**

1) *NDZ by State Prohibition:* EPA is responsible for two determinations necessary for a NDZ by State prohibition to be effective under CWA section 312(n)(7)(A). There is no duplication of effort in the NDZ application process.

2) *NDZ by EPA Prohibition:* EPA is responsible for the approval of a NDZ by EPA prohibition under CWA section 312(n)(7)(B). There is no duplication of effort in the NDZ application process.

3) *Petition for review:* EPA and the Secretary of Defense are responsible for reviewing determinations and standards upon petition by a State. There is no duplication of effort in the Petition for review process.

### **3(b): Public Notice Required Prior to ICR Submission to OMB**

The announcement of this ICR was made in the Federal Register on 03/25/2008, (73 FR 15752). EPA received no comments on this notice.

### **3(c): Consultations**

Three representatives of State environmental offices were contacted, during February and March of 2008 EPA and asked to provide oral comments on EPA's burden estimate (see section 6(e)): Todd Callaghan (MA Department of Environmental Protection, 617-626-1233); Rick Huntley (CT Department of Environmental Protection, 860-424-3034); and Kristen Fleming (MD Department Natural Resources, 410-260-8813). One of the representatives believes the estimate is too high, and the other two had no comment on 312(n) NDZs.

### **3(d): Effects of Less Frequent Collection**

The information collection requirements related to the NDZ application process described in this chapter of the ICR, and the Petition for review are submitted on a one-time basis. Reductions below this level are not feasible.

### **3(e): General Guidelines**

The information collection activities discussed in this chapter of the ICR are fully consistent with all guidelines in 5 CFR 1320.5(d)(2).

### **3(f): Confidentiality**

The information collection activities discussed in this chapter of the ICR do not require the submission of any confidential information.

### **3(g): Sensitive Questions**

The information collection activities discussed in this chapter of the ICR do not require the submission of any sensitive information.

## **SECTION 4: The Respondents and the Information Requested**

### **4(a): Respondents/SIC Codes**

State governments (SIC code 9511, NAICS code 924110) are the only respondents to the data collection activities described in this chapter of the ICR.

### **4(b): Information Requested**

#### ***No-discharge Zone (NDZ) by State Prohibition under Section 1700.9***

##### *(I) Data Items*

- Identification of discharge
- Definition of waters in proposed NDZ
- Determination of necessity for greater environmental protection
- Description of discharge removal facilities
- Information on regulation of this discharge from non-Armed Forces vessels

##### *(ii) Respondent Activities*

For the establishment of a NDZ by State Prohibition, a State must:

- Submit to EPA a certification that it has determined that the protection and enhancement of the quality of the proposed waters require greater environmental protection, and

- Submit to EPA a request with enough information for EPA to determine that: (1) adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (2) the prohibition will not have the effect of discriminating against Armed Forces vessels by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.

***No-discharge Zone (NDZ) by EPA Prohibition under Section 1700.10***

*(I) Data Items*

- Identification of discharge
- Definition of waters in proposed NDZ
- Technical analysis showing why protection requires a prohibition of the discharge
- Description of discharge removal facilities
- Information on regulation of this discharge from non-Armed Forces vessels

*(ii) Respondent Activities*

For the establishment of a NDZ by EPA Prohibition, a State must:

- Submit an application to EPA with enough information for EPA to determine that:
  - (1) the protection and enhancement of the quality of the proposed waters require a prohibition of the discharge;
  - (2) adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and
  - (3) the prohibition will not have the effect of discriminating against Armed Forces vessels by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.

***Petition for Review under Sections 1700.11 - 1700.13***

*(I) Data Items*

- Identification of discharge or standard
- Scientific and technical information on which petition is based
- An explanation of why the State believes that consideration of the information provided should result in a change to the determination or standard on a nationwide basis, and an explanation of how the technical information provided is relevant to one or more of the seven factors considered in making the original determination or standard as required by the statute (CWA 312(n)(2)(B))

*(ii) Respondent Activities*

If a State believes there is significant new information that could reasonably result in a change to

a determination of whether a particular discharge will require a marine pollution control device, or to a Federal standard of performance for a Marine Pollution Control Device, it may submit a petition requesting that the Secretary of Defense and EPA review the determination or standard.

## **SECTION 5: The Information Collected -- Agency Activities, Collection Methodology and Information Management**

### **5(a): Agency Activities**

#### ***No-discharge Zone (NDZ) by State Prohibition under Section 1700.9***

Agency activities associated with a request by a State to establish a NDZ by State Prohibition consist of the following:

- Clarify any questions from State applicants
- Review the information in the request and determine whether:
  - (1) adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and
  - (2) the prohibition will not have the effect of discriminating against Armed Forces vessels by reason of the ownership or operation by the Federal Government, or the military function, of the vessel
- Notify the State in writing of the above determinations
- Copy, store, file and maintain the State's request and EPA's response letter

#### ***No-discharge Zone (NDZ) by EPA Prohibition under Section 1700.10***

Agency activities associated with an application from a State to establish a NDZ by EPA Prohibition consist of the following:

- Clarify any questions from State applicants
- Review the information in the application and determine whether:
  - (1) the protection and enhancement of the quality of the proposed waters require a prohibition of the discharge;
  - (2) adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and
  - (3) the prohibition will have the effect of discriminating against Armed Forces vessels by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.
- Notify the State in writing whether the application for the NDZ was approved
- If the application is approved, publish notice of proposed rulemaking in the Federal Register, receive and review public comments, then issue a final determination taking into account any comments submitted

- Copy, store, file and maintain the State’s request and EPA’s response letter

### ***Petition for Review under Sections 1700.11 - 1700.13***

Agency activities (in conjunction with the Secretary of Defense) associated with an application from a State to review a determination or standard consist of the following:

- Clarify any questions from State applicants
- Review petition and decide whether the requested change will be made within two years after receiving the complete petition
- If the change requested in the petition is approved, publish notice of proposed rulemaking in the Federal Register, receive and review public comments, then issue a final determination taking into account any comments submitted
- If the change requested in the petition is not approved, notify the State of the reasons in writing
- Copy, store, file and maintain the State’s request and EPA’s response letter

### **5(b): Collection Methodology and Management**

The information described in this chapter of the ICR will be given to EPA by States in the form of a request letter, application, or petition. EPA will ensure the accuracy and completeness of this information by reviewing each submittal. This information will be made available to the public when necessary for rulemaking through the Federal Register.

### **5(c): Small Entity Flexibility**

The only possible respondents to the activities described in this chapter of the ICR are States. Therefore, there are no small entities affected.

### **5(d): Collection Schedule:**

#### ***No-discharge Zone (NDZ) by State Prohibition under Section 1700.9***

EPA expects very few requests for NDZs by State prohibition because the discharges which will be regulated by this rulemaking are not currently regulated by most States. This is not a reporting requirement, nor are there any deadlines associated with these requests. If a State determines that it would like to establish a NDZ by State prohibition, it is required by statute to secure two determinations by EPA, and this chapter of the ICR specifies the information EPA requires in order to make those determinations. EPA is estimating four requests per year.

#### ***No-discharge Zone (NDZ) by EPA Prohibition under Section 1700.10***

EPA expects very few applications for NDZs by EPA prohibition because the discharges which will be regulated by this rulemaking are not currently regulated by most States and because this process is more complex than establishing a NDZ by State prohibition. This is not a reporting requirement, nor are there any deadlines associated with these requests. If a State determines that it would like EPA to establish a NDZ by EPA prohibition, EPA is required by statute to make three determinations before doing so, and this chapter of the ICR specifies the information EPA requires in order to make those determinations. EPA is estimating one application per year.

#### ***Petition for Review under Sections 1700.11 - 1700.13***

EPA expects few petitions for review of determinations of whether a discharge incidental to the normal operation of an Armed Forces vessel requires control, or of standards of performance for Marine Pollution Control Devices. Such petitions may only be used by a State if there is significant new information, not considered previously, that could reasonably result in a change to a particular determination or standard. This is not a reporting requirement, nor are there any deadlines associated with these petitions. This chapter of the ICR specifies the information EPA requires in order to consider such a petition. EPA is estimating one petition per year.

### **SECTION 6: Estimating the Burden and Cost of the Collection**

Burden and cost estimates are in Tables 1 to 8, at the end of this section. The text in this section explains how these estimates were derived.

#### **6(a): Estimating Respondent Burden**

Respondent labor burden hours listed in Tables 1 to 3 are primarily based on data and assumptions presented in EPA's 2005 ICR analysis for Clean Water Act section 312 mandates. Where necessary, the level-of-effort determinations in the 1995 ICR were adjusted to correspond to the specific new information collection requirements resulting from the requirements of §§ 1700.9, 1700.10, and 1700.12. All of the level-of-effort estimates presented in Tables 1 to 3 have been reviewed for accuracy and reasonableness by EPA managers and EPA contractors, all of whom have had considerable project-management experience doing information-collection work similar to that required by proposed §§ 1700.9, 1700.10, and 1700.12.

#### **6(b): Estimating Respondent Costs**

##### *(I) Estimating Labor Costs*

All labor cost-rate data used in Tables 1 to 3 were obtained from the U.S. Bureau of Labor Statistics (BLS) Compensation Cost Trends homepage (<http://www.bls.gov/ncs/ect/>). The BLS homepage has a variety of links to publications and reports related to labor costs by category. The BLS report used in this ICR was titled *Employer Costs for Employee Compensation*, available on-line at: <ftp://ftp.bls.gov/pub/news.release/ecec.txt>.

Table 4 of the BLS report (<http://www.bls.gov/news.release/ecec.t04.htm> September, 2007) contains employee compensation data for State and Local Government Employers. The labor rates for respondent management, technical, and clerical personnel in Tables 1 to 3 of the ICR were obtained from the “White-Collar Occupations” category.

<b>BLS Report (Table 4) White-Collar Job Classification Titles</b>	<b>ICR Respondent Job Classification Titles Used in ICR Tables 1 - 3</b>	<b>Corresponding Labor Compensation (hourly rate) from BLS Report</b>
Executive, administrative, and managerial	Management	\$48.35
Professional specialty and technical	Technical	\$47.95
Administrative support including clerical	Clerical	\$27.02

The above labor rate data are “fully burdened” and include wages/salaries and benefits. The BLS report provides a breakdown of benefit costs, which includes paid leave, supplemental pay, insurance, retirement, and legally required benefit. Only fully burdened BLS labor cost data (i.e., total compensation) are used in the analysis described in this chapter of the ICR.

*(ii) Estimating Capital and Operations and Maintenance (O&M) Costs*

There are no predicted respondent capital or start-up costs associated with the activities described in this chapter of the ICR.

Nonlabor O&M includes only costs for photocopying, postage, telephone charges, and similar expenses. Item 1b of ICR Tables 1 to 3, Clarify Questions with EPA, is assumed to be exclusively telephone and facsimile machine expenses. Other O&M expenses listed in Tables 1 to 3 (i.e., under Items 3, 5, and 6) are predominantly photocopy, postage, and related paperwork distribution expenses.

**6(c): Estimating Agency (EPA) Burden and Cost**

EPA labor burden hours listed in Tables 4 to 6 are primarily based on data and assumptions presented in EPA’s 1995 ICR analysis for Clean Water Act section 312 mandates [specifically, information collection effort under for CWA sections 312(f)(3), (f)(4)(A) and (f)(4)(B)]. Where necessary, the level-of-effort determinations in the 1995 ICR were adjusted to correspond to the specific new information collection requirements resulting from the requirements of §§1700.9, 1700.10, and 1700.12. All of the level-of-effort estimations presented in Tables 4 to 6 have been reviewed for accuracy and reasonableness by EPA managers and EPA contractors, all of whom have had considerable project-management experience doing information-collection work similar to that required by §§ 1700.9, 1700.10, and 1700.12.

Agency labor costs data associated with this chapter of the ICR were obtained using pay scale rates for GS-9, GS-12, and GS-14 employees. The 2008 General Schedule Locality Pay Tables can be found at <http://www.opm.gov/oca/08tables/html/dcb.asp>. The salary scales contained in the table were effective January 2008.

Step 1 of the GS salaries was used in this chapter of the ICR analysis. The annual GS salary rates were converted to hourly rates according to instructions in Section 6(c) of the *EPA ICR Handbook* (12/96 version). Total salaries were divided by 2,080, which represent the average number of hours work in a calendar year, and then multiplied by a factor of 1.6. The multiplier represents the benefits multiplication factor. The result is the true hourly cost to the Federal government to employ a Federal worker for one hour. These calculated hourly rates are used in Tables 4 to 6 of the ICR.

<b>ICR Agency Job Classification Title Used in ICR Tables 4 - 6</b>	<b>January 2008 Annual GS Salary (Step 1)</b>	<b>Work Hours Per Year Factor</b>	<b>Benefits Factor</b>	<b>Calculated Hourly Rate Used in Tables 4 – 6</b>
Management	GS-14, \$98,033	÷ 2,080	× 1.6	\$ 75.41/hr
Technical	GS-12, \$69,764	÷ 2,080	× 1.6	\$ 53.66/hr
Clerical	GS-9, \$48,108	÷ 2,080	× 1.6	\$ 37.01/hr

**6(d): Bottom Line Burden Hours and Cost Tables**

Total estimated burdens of associated with the requirements under §§ 1700.9, §1700.10, and

§1700.12 to the State Agency respondents and to EPA are summarized in Tables 7 and 8, respectively. The data contained in both of these tables are transcribed from Tables 1 to 6.

***Bottom line Respondent (State Agency) Estimated Burden and Cost Summary for 312(n) (from table 7)***

	Number of Respondents Per Year	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
<b>TOTAL</b>	<b>6</b>	<b>6</b>	<b>957.50</b>	<b>\$43,205.53</b>	<b>\$0.00</b>	<b>\$900</b>

***Bottom line EPA Estimated Burden and Cost Summary for 312(n) (from table 8)***

	Number of Respondents Per Year	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
<b>TOTAL</b>	<b>6</b>	<b>6</b>	<b>173</b>	<b>\$10,038.14</b>	<b>\$0.00</b>	<b>\$360</b>

**6(e): Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 160 hours per response (957.5 hours/6.) Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the

use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2008-0150, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. An electronic version of the public docket is available at [www.regulations.gov](http://www.regulations.gov). Use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. (EPA-HQ-OW-2008-0150) and OMB control number (2040-0187) in any correspondence.

Table 1. Establishment of No-discharge Zone by State Prohibition, Respondent (State Agency) Burden Hours and Costs [40 CFR § 1700.9]

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 4)	Total Hours/ Year	<b>Total Cost/ Year (\$)</b>
Request Preparation								
Read regulations; review guidance document; plan strategy	3.00	20.00				4	92.00	\$4,416.20
Clarify questions with EPA		3.00			50	4	12.00	\$775.40
Gather Information								
Identification of discharge		0.25				4	1.00	\$47.95
Definition of waters in NDZ		1.00				4	4.00	\$191.80
Determination of necessity for greater environmental protection		5.00				4	20.00	\$959.00
Description of discharge removal facilities	1.25	9.00				4	41.00	\$1,967.95
Information on regulation of this discharge from non-Armed Forces vessels		2.75				4	11.00	\$527.45
Create Information (analyze data and compile/write Request Letter)	8.00	59.00	10.00		40	4	308.00	\$14,104.20
Review information	8.00	32.00	8.00			4	192.00	\$8549.44
Complete paperwork (e.g., Request Letter)	3.00		3.00		10	4	24.00	\$944.44
Copy, store, file, and maintain information			3.00		50	4	12.00	\$524.24
<b>Subtotal (hours and costs)</b>	<b>23.25</b>	<b>132.00</b>	<b>24.00</b>	<b>0.00</b>	<b>150.00</b>	<b>4</b>	<b>717.00</b>	<b>\$33,008.07</b>

\* O&M costs include photocopying, postage, telephone, etc.

Table 2. Establishment of No-discharge Zone by EPA Prohibition, Respondent (State Agency) Burden Hours and Costs [40 CFR §1700.10]

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Request Preparation								
Read regulations; review guidance document; plan strategy	3.00	20.00				1	23.00	\$1,104.05
Clarify questions with EPA		3.00			\$50.00	1	3.00	\$193.85
Gather Information								
Identification of discharge		0.25				1	0.25	\$11.99
Definition of waters in NDZ		1.00				1	1.00	\$47.95
Technical analysis showing why protection requires a prohibition of the discharge		9.00				1	9.00	\$431.55
Description of discharge removal facilities	1.25	9.00				1	10.25	\$491.99
Information on regulation of this discharge from non-Armed Forces vessels		2.75				1	2.75	\$131.86
Create Information (analyze and interpret data)	8.00	70.00	10.00		\$40.00	1	88.00	\$4053.50
Review information and make determination	8.00	32.00	8.00			1	48.00	\$2137.36
Complete paperwork (e.g., Reply Letter)	3.00		3.00		\$10.00	1	6.00	\$236.11
Disclose information (i.e., <i>Federal Register</i> notices)								\$0.00
Copy, store, file, and maintain information			3.00		\$50.00	1	3.00	\$131.06
Subtotal (hours and costs)	23.25	147.00	24.00	\$0.00	\$150.00	1	194.25	\$8971.27

\* O&M costs include photocopying, postage, telephone, etc.

**Table 3. Petition for Review, Respondent (State Agency) Burden Hours and Costs [40 CFR § 1700.12]**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Request Preparation								
Read regulations; review guidance document; plan strategy	1.00	4.00				1	5.00	\$240.15
Clarify questions with EPA		1.00			\$50.00	1	1.00	\$97.95
Gather Information								
Identification of discharge or standard		0.25				1	0.25	\$11.99
Scientific and technical information on which petition is based	0.50	6.00				1	6.50	\$311.88
Explanation on how information relates to statutory factors	0.50	2.00				1	2.50	\$120.08
Create Information (analyze and interpret data)	1.00	12.00	2.00		\$40.00	1	15.00	\$717.79
Review petition information for accuracy and make determination	2.00	4.00	4.00		\$10.00	1	10.00	\$406.58
Complete paperwork (e.g., Petition)	2.00		2.00			1	4.00	\$150.74
Disclose Information (i.e., Federal Register notices)								\$0.00
Copy, store, file, and maintain information			2.00		\$50.00	1	2.00	\$104.04
Subtotal (hours and costs)	7.00	29.25	10.00		\$150.00	1.00	46.25	\$2,161.19

\* O&M costs include photocopying, postage, telephone, etc.

Table 4. Establishment of No-discharge Zone by State Prohibition, Agency (EPA) Burden Hours and Costs [40 CFR § 1700.9]

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr (GS-14)	Technical \$53.66/hr (GS-12)	Clerical \$37.01/hr (GS-9)	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 4)	Total Hours/ Year	Total Cost/ Year (\$)
Request Preparation								
Read regulations; review guidance document; plan strategy								
Clarify questions with EPA		2.00				4	8.00	\$429.28
Gather Information								
Identification of discharge								\$0.00
Definition of waters in NDZ								\$0.00
Determination of necessity for greater environmental protection								\$0.00
Description of discharge removal facilities								\$0.00
Information on regulation of this discharge from non-Armed Forces vessels								\$0.00
Create Information (analyze data and compile/write Request)								\$0.00
Review information and make determination	4.00	16.00				4	80.00	\$4,640.80
Complete paperwork (e.g., Reply Letter)	1.50		1.50		\$10.00	4	12.00	\$714.52
Copy, store, file, and maintain information			1.50		\$50.00	4	6.00	\$422.06
Subtotal (hours and costs)	5.50	18.00	3.00		\$60.00	4	106.00	\$6,206.66

\* O&M costs include photocopying, postage, telephone, etc.

Table 5. Establishment of No-discharge Zone by EPA Prohibition, Agency (EPA) Burden Hours and Costs [40 CFR §1700.10]

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr (GS-14)	Technical \$53.66/hr (GS-12)	Clerical \$37.01/hr (GS-9)	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Request Preparation								
Read regulations; review guidance document; plan strategy								
Clarify questions with EPA		2.00				1	2.00	\$107.32
Gather Information								\$0.00
Identification of discharge								\$0.00
Definition of waters in NDZ								\$0.00
Technical analysis showing why protection requires a prohibition of the discharge								\$0.00
Description of discharge removal facilities								\$0.00
Information on regulation of this discharge from non-Armed Forces vessels								\$0.00
Create Information (analyze and interpret data)								\$0.00
Review information and make determination	4.00	16.00				1	20.00	\$1,160.20
Complete paperwork (e.g., Reply Letter)	1.50		1.50		\$10.00	1	3.00	\$178.63
Disclose information (i.e., <i>Federal Register</i> notices)	1.00	4.00	2.00			1	7.00	\$364.07
Copy, store, file, and maintain information			1.50		\$50.00	1	1.50	\$105.52
Subtotal (hours and costs)	6.50	22.00	5.00		\$60.00	1	33.50	\$1,915.74

\* O&M costs include photocopying, postage, telephone, etc.

Table 6. Petition for Review, Agency (EPA) Burden Hours and Costs [40 CFR § 1700.12]

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr (GS-14)	Technical \$53.66/hr (GS-12)	Clerical \$37.01/hr (GS-9)	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Request Preparation								
Read regulations; review guidance document; plan strategy								
Clarify questions with EPA		2.00				1	2.00	\$107.32
Gather Information								
Identification of discharge or standard								\$0.00
Scientific and technical information on which petition is based								\$0.00
Explanation on how information relates to statutory factors								\$0.00
Create Information (analyze and interpret data)								\$0.00
Review petition information for accuracy and make determination	4.00	16.00				1	20.00	\$1,160.20
Complete paperwork (e.g., Reply Letter)	1.50		1.50		\$10.00	1	3.00	\$178.63
Disclose Information (i.e., <i>Federal Register</i> notices)	1.00	4.00	2.00			1	7.00	\$364.07
Copy, store, file, and maintain information			1.50		\$50.00	1	1.50	\$105.52
Subtotal (hours and costs)	6.50	22.00	5.00		\$60.00	1	33.50	\$1,915.74

\* O&M costs include photocopying, postage, telephone, etc.

Table 7. Total Estimated Respondent (State Agency) Burden and Cost Summary

	Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
No-discharge Zone by State Prohibition [40 CFR § 1700.9; Table 1]	4	4	717.00	\$32,408.07	\$0.00	\$600.00
No-discharge Zone by EPA Prohibition [40 CFR § 1700.10; Table 2]	1	1	194.25	\$8,821.27	\$0.00	\$150.00
Petition for Review [40 CFR § 1700.12; Table 3]	1	1	46.25	\$1,976.19	\$0.00	\$150.00
TOTAL	6	6	957.50	\$43,205.53	\$0.00	\$900.00

Table 8. Total Estimated Agency (EPA) Burden and Cost Summary

	Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
No-discharge Zone by State Prohibition [40 CFR § 1700.9; Table 4]	4	4	106.00	\$6,206.66	\$0.00	\$240.00
No-discharge Zone by EPA Prohibition [40 CFR § 1700.10; Table 5]	1	1	33.50	\$1,915.74	\$0.00	\$60.00
Petition for Review [40 CFR § 1700.12; Table 6]	1	1	33.50	\$1,915.74	\$0.00	\$60.00
TOTAL	6	6	173.00	\$10,038.14	\$0.00	\$360.00

## **Chapter II. Supporting Statement for the Establishment of No-discharge Zones for Vessel Sewage under CWA Sections 312(f)(3) and 312(f)(4)(A) and 312(f)(4B)**

### **SECTION 1: Identification of the Information Collection**

#### **1(a): Title of the Information Collection**

Establishment of No-discharge Zones under Clean Water Act Section 312.

#### **1(b): Short Characterization/Abstract**

EPA requires the collection of information by States interested in designating State waters under the Clean Water Act §312(f) as areas prohibiting the discharge of treated or untreated sewage from vessels. The CWA mandates under §312 (f)(3) and (f)(4)(A) and (f)(4)(B), that EPA review State requests for prohibiting the discharge of vessel sewage into waters identified by the State. If the State applies under §312(f)(3), EPA must determine from the State application whether there are adequate and reasonably available pumpout facilities for such waters to which such a prohibition would apply. A State can petition EPA to designate its waters as an NDZ for vessel sewage if the protection of the waters require a complete prohibition of the discharge of vessel sewage. Under §312(f)(4)(A), upon application by a State, EPA may by regulation establish a No-discharge Zone for waters which protection and enhancement of the quality of specified waters within such State require such a prohibition. Finally, under §312(f)(4)(B), upon application by a State, EPA may, by regulation, establish a drinking water intake zone in any waters within that State and prohibit the discharge of sewage from vessels within that zone. For EPA to make the approvals and designations related to establishing No-discharge Zones (NDZs), States are required under the regulations to provide information relevant to this decision-making process thus triggering the requirement for EPA to have an ICR in compliance with the Paperwork Reduction Act.

### **SECTION 2: Need for and Use of the Collection**

This section describes the statutory and regulatory authorities associated with this information collection. It also summarizes the use of the information designating NDZs.

#### **2(a): Need/Authority for the Collection**

The need for EPA to obtain information to establish NDZs stems from statutory authority and subsequent regulations. The establishment of NDZs provide State and local governments with a tool to protect waters from treated or untreated vessel sewage discharges, which is one of many types of water pollution. A summary of the statutory authority and subsequent regulations, follows. A copy of the relevant sections of the statute is included in Attachment C and the relevant sections of the implementing regulations are included in Attachment D.

1) *Statutory Authority:* Section 312(f) (33 U.S.C. 1322) of the Clean Water Act (CWA) provides States with the opportunity to apply to EPA for a complete prohibition of vessel sewage

(treated and untreated) in all or some of a State's waters. The area designated as no discharge, if approved by EPA, is called a NDZ. EPA has delegated its authority to establish NDZs under §§312(f)(3), (f)(4)(A), and (f)(4)(B) to EPA Regional Administrators (Administrator). There are three parts of CWA §312 that are related to the establishment of NDZs. They are:

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

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

§312(f)(4)(B). Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

Most States which have designated and gained approval of NDZs have done so under §312(f)(3). This method requires the State to demonstrate a need for the discharge prohibition and the existence of adequate sanitary waste reception facilities (i.e., pumpout facilities). The other two methods under CWA §312(f) typically have fewer conditions to meet because the proposed NDZ is an area of particular environmental importance [§312(f)(4)(A)] or is a proposed drinking water intake zone [§312(f)(4)(B)]. The relevant regulations promulgated under CWA §312 are described in the following section.

2) *Regulatory Authority*: CWA §312(f) authorizes the EPA to develop regulations on the standard of performance for marine sanitation devices (MSDs) (see 40 CFR Part 140.3). The standard only applies to vessels equipped with installed toilets. The first part of the standard applies to vessels traveling on waters which are land-locked and do not have interstate traffic. MSDs on these vessels must be designed and operated so that no discharge of sewage, either treated or untreated, occurs. The second part of the standard pertains to all other waters and provides specific effluent levels that MSDs must meet.

As provided for in CWA §312, the EPA regulations also provide States with the opportunity to apply for a No-discharge Zone, or a complete prohibition of vessel sewage (treated and untreated) in all or some of a State's waters. The regulations are found at 40 CFR 140.4.

Under 40 CFR 140.4(a), the Administrator must review State applications for prohibiting the discharge of vessel sewage into waters identified by the State and must determine from the State application whether there are adequate and reasonably available pumpout facilities for such waters to which such a prohibition would apply [§312(f)(3)].

Under 40 CFR 140.4(b), States may make a written application to EPA to designate an NDZ in waters which are of particular environmental importance (e.g., Boundary Waters Canoe Area) [§312(f)(4)(A)].

Under 40 CFR 140.4(c), States may make written application to EPA to designate an NDZ in waters which are used for drinking purposes [§312(f)(4)(B)].

## **2(b): Practical Utility/Users of the Data**

The State environmental agency uses the information collected under this chapter of the ICR to prepare the application to be submitted to the EPA Regional Administrator. An NDZ application is submitted by a State environmental agency to the EPA Regional Administrator. Depending on the type of NDZ sought by the State, EPA uses the information to assist the State NDZ designation. EPA Headquarters and EPA Regional Offices use the information collected under this ICR to carry out their responsibilities under the CWA with respect to reviewing applications for proposed NDZs and granting approval of qualifying NDZs.

(1) NDZ Designation under 312(f)(3) and 40 CFR 140(a): The information requested from the State will be used by EPA to make the determination of the availability of pumpout or dump stations in the area supporting a State's potential NDZ for vessel sewage designation.

(2) NDZ Designation under 312(f)(4)(A) and 40 CFR 140(b): The information requested by EPA from the State will be used by EPA to designate the particular waters as an NDZ for vessel sewage. This type of designation is sought when the State believes and EPA certifies that the waters require additional protection because of its recreational, economic, ecological, or scientific value.

(3) NDZ Designation under 312(f)(4)(B) and 40 CFR 140(c): The information requested by

EPA from the State will be used by EPA to designate the particular waters as an NDZ for vessel sewage because the waters will be used for drinking purposes.

### **SECTION 3: Non-duplication, Public Notice, Consultations, and Other Collection Criteria**

This section describes EPA's efforts to ensure that the information collected for the establishment of NDZs is not duplicative, appropriate consultations have occurred, the public has had an opportunity to comment on the proposed requirements, and other collection criteria.

#### **3(a): Non-duplication**

No similar information is currently available in the form required for EPA to make a decision on designating waters as NDZs. Each application for a NDZ by definition needs to be site-specific.

##### ***NDZ Designation under 40 CFR 140.4(a)***

If a State applies for an NDZ under *40 CFR 140.4(a)*, EPA is responsible for determining if there are adequate pumpout and dump stations. Upon a favorable determination by EPA, the State can designate its waters as an NDZ. There is no duplication of effort in the NDZ application process.

##### ***NDZ Designation under 40 CFR 140.4(b)***

If a State applies to EPA for the designation of its waters as an NDZ under *40 CFR 140.4(b)* because of the environmental or economic importance of the waters, EPA can designate the waters as an NDZ by regulation. There is no duplication of effort in the NDZ application process.

##### ***3) NDZ Designation under 40 CFR 140.4(c)***

If a State applies to EPA for the designation of its waters as an NDZ under *40 CFR 140.4(c)* because of the waters use as a drinking water intake zone, EPA can designate the waters as an NDZ by regulation.

There is no duplication of effort in the NDZ application process. The application can be prepared using existing sources of data. EPA has developed a guidance document to help States prepare their NDZ for vessel sewage applications, and it includes suggestions on where to find the information required. The document is titled "Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials" (EPA 842-B-94-004). Only when

secondary sources of information have been exhausted will primary data collection be required.

### **3(b): Public Notice Required Prior to ICR Submission to OMB**

The announcement of this ICR was made in the Federal Register on 03/25/2008, (73 FR 15752). EPA received no comments on this notice.

### **3(c): Consultations**

Three representatives of State environmental offices were contacted, during February and March of 2008 EPA and asked to provide oral comments on EPA's burden estimate (see section 6(e)): Todd Callaghan (MA Department of Environmental Protection, 617-626-1233); Rick Huntley (CT Department of Environmental Protection, 860-424-3034); and Kristen Fleming (MD Department Natural Resources, 410-260-8813). Two of the representatives believe the estimate is too low and the other felt it was too high.

### **3(d): Effects of Less Frequent Collection**

The information collection requirements related to the NDZ application process are submitted on a one-time basis. Reductions below this level are not feasible.

### **3(e): General Guidelines**

The information collection activities discussed in this chapter of the ICR are fully consistent with all guidelines in 5 CFR 1320.5(d)(2).

### **3(f): Confidentiality**

The information collection activities discussed in this chapter of the ICR do not require the submission of any confidential information.

### **3(g): Sensitive Questions**

The information collection activities discussed in this chapter of the ICR do not require the submission of any sensitive information.

## **SECTION 4: The Respondents and the Information Requested**

This section provides a description of the information collection requirements affiliated with the NDZ for vessel sewage application process. Although the three types of NDZ applications under 40 CFR 140.4 (a-c) have different information collection requirements, the application development and submittal process is the same.

### **4(a): Respondents/SIC Codes**

Under Section 312(f)(3) and (f)(4)(A) and (B) of the CWA, States have the authority to designate an NDZ for vessel sewage with EPA's concurrence or have EPA designate portions of their waters as an NDZ for vessel sewage. State Governments (SIC 9511, NAICS code 924110) are the only respondents to the data collection activities described in this chapter of the ICR.

### **4(b): Information Requested**

#### ***NDZ Designation under 40 CFR 140.4(a)***

##### *(I) Data Items*

There are seven application and information requirements listed in 40 CFR §140.4(a). The information required includes:

1. A certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard;
2. A map showing the location of commercial and recreational pumpout facilities;
3. A description of the location of pumpout facilities within waters designated for no discharge;
4. The general schedule of operating hours of the pumpout facilities;
5. The draft requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility;
6. Information indicating that treatment of wastes from such pumpout facilities is in conformance with Federal law; and
7. Information on vessel population and vessel usage of the subject waters.

##### *Respondent Activities*

1. An NDZ application under 40 CFR 140.4(a) is prepared by the State environmental agency.
2. The State environmental agency, in turn, submits the application to the EPA Regional office for approval of an NDZ designation.
3. This approval involves the determination of available pumpouts.

4. Upon a finding of adequate or inadequate pumpout station availability, EPA issues a Notice of Determination stating such.
5. A State then may designate the particular waters as an NDZ depending on EPA's finding.

***NDZ Designation under 40 CFR 140.4 (b)***

If a State applies to EPA for the designation of its waters as an NDZ under 40 CFR 140.4(b) because of the environmental, scientific, recreational, or economic importance of the waters, EPA can designate the waters as an NDZ by regulation.

***(I) Data Items***

The regulations at 40 CFR 140.4(b) require the following information to be submitted for the establishment of an NDZ for waters of particular environmental importance:

1. Specification of the waters or portions thereof for which a complete prohibition is desired;
2. Identification of water recreational areas, and/or;
3. Identification of aquatic sanctuaries, and/or;
4. Identification of identifiable fish-spawning and nursery areas, and/or;
5. Identification of areas of intensive boating activities; and
6. A map of the waters to be designated as an NDZ.

***(ii) Respondent Activities***

1. An application submitted under 40 CFR 140.4(b) is prepared by the State environmental agency.
2. The State environmental agency, in turn, submits the application to EPA for designation of an NDZ.
3. The application development process includes five types of information collection activities.
4. EPA, after evaluation of the application, can designate by regulation an NDZ for the particular waters.
5. EPA can modify the size of the NDZ at its discretion.

***NDZ Designation under 40 CFR 140.4(c)***

If a State applies to EPA for the designation of its waters as an NDZ under 40 CFR 140.4(c) because of the waters use as a drinking water intake zone, EPA can designate the waters as an NDZ by regulation.

*(I) Data Items*

According to 40 CFR 140.4(c), to establish an NDZ under these provisions, the following information is required in the application:

1. Specification and description of the location of the drinking water supply intake(s) and the community served by the intakes;
2. Specification and description of the waters for which a complete prohibition is desired;
3. A map of the waters to be designated as a drinking water intake zone; and
4. A statement justifying the size of the requested drinking water intake zone.

*(ii) Respondent Activities*

1. An application submitted under 40 CFR 140.4(c) is prepared by the State environmental agency.
2. The State environmental agency, in turn, submits the application to the EPA Regional office for approval of a NDZ designation.
3. The application development process includes four types of information collection activities.
4. EPA, after evaluation of the application, can designate by regulation an NDZ for the particular waters.
5. EPA can modify the size of the NDZ at its own discretion.

**SECTION 5: The Information Collected—Agency Activities, Collection Methodology, and Information Management**

This section describes Agency activities involved in implementing the process for the NDZ for vessel sewage designations.

**5(a): Agency Activities**

***NDZ Designation under 40 CFR 140.4(a)***

Agency activities associated with a request by a State to establish an NDZ for vessel sewage under 40 CFR 140.4(a) consists of the following:

1. Clarify any questions from State applicants;
2. Review the information in the request and determine whether: adequate facilities for the safe and sanitary removal of the discharges are reasonably available for the waters to which the prohibition would apply;
3. Notify the State in writing of the above determinations including a Federal Register Notice of Determination; and

4. Copy, store, file, and maintain the State's request and EPA's response letter.

#### ***NDZ Designation under 40 CFR 140.4 (b)***

Agency activities associated with a request by a State to establish an NDZ for vessel sewage under 40 CFR 140.4 (b) consists of the following:

1. Clarify any questions from State applicants;
2. Review the information in the request and determine whether: the water for which the prohibition would apply are of environmental importance;
3. Notify the State in writing of the above determinations;
4. Prepare the regulation for the NDZ designation;
5. Copy, store, file, and maintain the State's request and EPA's response letter.

#### ***NDZ Designation under 40 CFR 140.4(c)***

Agency activities associated with a request by a State to establish an NDZ for vessel sewage under 40 CFR 140.4(c) consist of the following:

1. Clarify any questions from State applicants;
2. Review the information in the request and determine whether: the water for which the prohibition would apply are suitable for drinking purposes;
3. Notify the State in writing of the above determinations;
4. Prepare the regulation for the NDZ designation;
5. Copy, store, file, and maintain the State's request and EPA's response letter.

#### **5(b): Collection Methodology and Management**

The information collection associated with this chapter of the ICR will be given to EPA by States in the form of a request letter and/or application. EPA will ensure the accuracy and completeness of this information by reviewing each submittal. This information will be made available to the public for rulemaking through the Federal Register.

#### **5(c): Small Entity Flexibility**

The only respondents to the activities described in this chapter of the ICR are States. Therefore, there are no small entities affected.

#### **5(d): Collection Schedule**

#### ***NDZ Designation under 40 CFR 140.4(a)***

NDZ designations under this provision have been established significantly more frequently than under the other two provisions. EPA has to determine if there are adequate pumpout facilities available. The designation does not require any additional information collection other than the

one-time application.

***NDZ Designation under 40 CFR 140.4(b)***

There are two NDZs designated under this provision. A State applies for the NDZ and EPA determines if such an NDZ is warranted based on the environmental importance of the waters. Upon a favorable determination, EPA establishes the NDZ by regulation. The designation does not require any additional information collection other than the one-time application.

***NDZ Designation under 40 CFR 140.4(c)***

There is one NDZs designated under this provision. A State applies for the NDZ and EPA determines if the waters are for drinking purposes and the size of the NDZ. Upon a favorable determination, EPA establishes the NDZ by regulation. NDZs established under this provision (like those established under the other provisions) do not require any additional information collection other than the one-time application.

**SECTION 6: Estimating the Burden and Cost of the Collection**

Burden and Costs associated with the information collection activities described in this chapter are in Tables 9-16 at the end of this section. The text below explains how the burden and costs estimates were derived.

**6(a): Estimating Respondent burden**

Respondent labor burden hours listed in Tables 9, 11, and 13 were based on EPA's experience in assisting States in establishing NDZs for vessel sewage in their waters. These burden hours were also derived using information collection activities gathered for previous ICRs that have similar information collection activities. The level-of-effort estimates presented for these tables were reviewed by EPA's staff and managers, all of whom have experience in assessing information collection work similar to that described in this chapter of the ICR.

Burden hours by task for each of the three application types were estimated based on the amount of time needed to complete the "model" application in the guidance document, and estimates of the time needed to complete the previously submitted applications reviewed as part of the development of the ICR. Each application is assumed to be reviewed twice by the State government and by EPA. In other words, EPA is assumed to request additional information or to deny the application, thus triggering a second round of review. This is a conservative estimate and likely overstates the associated costs.

Listed below are some of the major activities associated with the designation of NDZ for vessel sewage described in this chapter of the ICR for which burden hours have been categorized:

- The application preparation process includes the following type of personnel by stage of the process
  6. Read regulation and review guidance document: management and technical
  7. Information gathering: technical
  8. Preparing application: management, technical, and clerical
- The application review process includes management and technical personnel.
- Information storage involves clerical time for State personnel.

***NDZ Designation under 40 CFR 140.4(a)***

Applications are submitted to EPA by States. Based on EPA forecasts, eight applications per year were assumed. The average application was assumed to be about 15 pages in length. This is based on the average number of pages in previously submitted applications and assumes some optional information is provided in the application

***NDZ Designation under 40 CFR 140.4(b)***

Applications are submitted to EPA by States. Based on past experience, EPA estimates that one application will be received every three years. The average application was assumed to be about 50 pages in length. This is based on the number of pages in a previously submitted application which provides the information required for this type of NDZ application.

***NDZ Designation under 40 CFR 140.4(c)***

Applications are also submitted to EPA by States. EPA estimates that there will be one application each year. The application was assumed to be about 15 pages in length. This is based on the type of information requested and examples of this information included in previously submitted NDZ applications.

**6(b): Estimating Respondent Costs**

*(I) Estimating Labor Costs*

All labor cost-rate data used in Tables 9, 11, and 13 were obtained from the U.S. Bureau of Labor Statistics (BLS) Compensation Cost Trends homepage (<http://www.bls.gov/ncs/ect/>). The BLS homepage has a variety of links to publications and reports related to labor costs by category. The BLS report used in this ICR was titled *Employer Costs for Employee Compensation*, available on-line at: <ftp://ftp.bls.gov/pub/news.release/ecec.txt>.

Table 4 of the BLS report (<http://www.bls.gov/news.release/ecec.t04.htm> September, 2007) contains employee compensation data for State and Local Government Employers. The labor rates for respondent management, technical, and clerical personnel in Tables 9, 11, and 13 of the ICR were obtained from the “White-Collar Occupations” category.

<b>BLS Report (Table 4) White-Collar Job Classification Titles</b>	<b>ICR Respondent Job Classification Titles Used in ICR Tables 9, 11, and 13</b>	<b>Corresponding Labor Compensation (hourly rate) from BLS Report</b>
Executive, administrative, and managerial	Management	\$48.35
Professional specialty and technical	Technical	\$47.95
Administrative support including clerical	Clerical	\$27.02

The above labor rate data are “fully burdened” and include wages/salaries and benefits. The BLS report provides a breakdown of benefit costs, which includes paid leave, supplemental pay, insurance, retirement, and legally required benefits. Only fully burdened BLS labor cost data (i.e., total compensation) are used in the analysis described in this chapter of the ICR.

The unit costs were multiplied by the appropriate units of activity (e.g., burden hours) to estimate costs per application for States seeking an NDZ for vessel sewage. Annualized costs were based on the number of applications expected per year.

*(ii) Estimating Capital and Operations and Maintenance (O&M) Costs*

There are no predicted respondent capital or start-up costs associated with the activities described in this chapter of the ICR.

Nonlabor O&M includes only costs for photocopying, postage, telephone charges, and similar expenses. Item 1b of ICR Tables 9, 11, and 13, Clarify Questions with EPA, is assumed to be exclusively telephone and facsimile machine expenses. Other O&M expenses listed in Tables 9, 11, and 13 are predominantly photocopy, postage, and related paperwork distribution expenses.

**6(c): Estimating Agency (EPA) Burden and Cost**

***Agency Burden***

EPA labor burden hours listed in Tables 10, 12, and 14 are primarily based on EPA’s experience in dealing with States in establishing NDZs for vessel sewage. Also data from the 2003 ICR

addressing NDZs for vessel sewage were evaluated. Where necessary, the level-of-effort determinations and cost estimates in the 2003 ICR were adjusted to correspond to the new cost information. All of the level-of-effort estimations presented in Tables 10, 12 and 14 have been reviewed for accuracy and reasonableness by EPA staff and managers, all of whom have had considerable project-management experience doing information-collection work similar to that required by 40 CFR 140.4 (a-c).

Listed below are some of the major activities associated with the designation of NDZ for vessel sewage described in this chapter of the ICR for which burden hours have been categorized:

- Questions from the applicant's technical personnel are answered by EPA technical personnel.
- The application review process includes management and technical personnel.
- The Federal Register Notice process includes the following type of personnel: management, technical, and clerical.
- Information storage involves clerical time

The estimation of EPA's burden hours depends on the type of NDZ for vessel sewage that the State is seeking.

***NDZ Designation under 40 CFR 140.4(a)***

EPA reviews application by States focusing on the availability of pumpout facilities. Based on EPA forecasts, eight applications per year were assumed. The average application was assumed to be about 15 pages in length. EPA discloses its determination in the Federal Register by Notice of Determination.

***NDZ Designation under 40 CFR 140.4(b)***

EPA reviews application from States focusing on the preservation of environmentally important habitats. Based on past experience, EPA estimates that one application will be received every three years. The average application was assumed to be about 50 pages in length. EPA discloses its determination in the Federal Register either by rule or by Notice of Determination.

***NDZ Designation under 40 CFR 140.4(c)***

EPA reviews application from States focusing on the use of the waters for drinking purposes. EPA estimates that there will be one application each year. The application was assumed to be about 15 pages in length. EPA discloses its determination in the Federal Register either by rule or by Notice of Determination.

**Agency Costs**

Agency labor costs data associated with this chapter of the ICR were obtained using pay scale rates for GS-9, GS-12, and GS-14 employees. The 2008 General Schedule Locality Pay Tables can be found at <http://www.opm.gov/oca/08tables/html/dcb.asp>. The salary scales contained in the table were effective January 2008. Step 1 of the GS salaries was used in this chapter of the ICR analysis. The annual GS salary rates were converted to hourly rates according to instructions in Section 6(c) of the *EPA ICR Handbook* (12/96 version). Total salaries were divided by 2,080, which represent the average number of hours work in a calendar year, and then multiplied by a factor of 1.6. The multiplier represents the benefits multiplication factor. The result is the true hourly cost to the Federal government to employ a Federal worker for one hour. These calculated hourly rates are used in Tables 10, 12, and 14 of the ICR.

<b>ICR Agency Job Classification Title Used in ICR Tables 4 - 6</b>	<b>January 2008 Annual GS Salary (Step 1)</b>	<b>Work Hours Per Year Factor</b>	<b>Benefits Factor</b>	<b>Calculated Hourly Rate Used in Tables 4 - 6</b>
Management	GS-14, \$98,033	÷ 2,080	× 1.6	\$ 75.41/hr
Technical	GS-12, \$69,764	÷ 2,080	× 1.6	\$ 53.66/hr
Clerical	GS-9, \$48,108	÷ 2,080	× 1.6	\$ 37.01/hr

The unit costs were multiplied by the appropriate units of activity (e.g., burden hours) to estimate costs per application for EPA. Annualized costs were based on the number of applications expected per year.

**6(d): Bottom Line Burden Hours and Cost Tables**

Total estimated burdens of associated with 40 CFR 140.4(a-c) to the State Agency respondents and to EPA are summarized in Tables 15 and 16, respectively.

**Estimated Respondent (State Agency) Burden and Cost Summary for Establishing NDZs for Vessel Sewage under CWA 312(f) (from table 15)**

Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)

10	9.33	1250.00	\$55,314.79	\$0.00	\$1,400.00
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**Estimated Agency (EPA) Burden and Cost Summary for Establishing NDZs for Vessel Sewage under CWA 312(f) (from table 16)**

Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)
10	9.33	311	\$17,866.92

**6(e): Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 134 hours per response (1250 hours/9.33). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2008-0150, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. An electronic version of the public docket is available at [www.regulations.gov](http://www.regulations.gov). Use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified

above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. (EPA-HQ-OW-2008-0150) and OMB control number (2040-0187) in any correspondence.

**Table 9. State No-Discharge Zone Applications under 40 CFR 140.4(a)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	0.00	4.00	0.00	\$0	\$0	8	32	\$1534.40
b. Clarify questions with EPA	0.00	1.00	0.00	\$0	\$50	8	8	\$783.60
Gather Information								\$0.00
a. Certification of necessity for greater environmental protection	1.00	6.00	0.00	\$0	\$0	8	56	\$2,688.40
b. Pumpout facility map	1.00	2.00	0.00	\$0	\$0	8	24	\$1154.00
c. Description of pumpout facilities	1.00	1.00	0.00	\$0	\$0	8	16	\$770.40
d. Schedule of operating hours of pumpout facilities	1.00	1.00	0.00	\$0	\$0	8	16	\$770.40
e. Draft requirements and water depth adjacent to pumpout facilities	1.00	2.00	0.00	\$0	\$0	8	24	\$1154.00
f. Waste disposal methods for pumpout facilities	1.00	2.00	0.00	\$0	\$0	8	24	\$1154.00
g. Vessel population and vessel usage	1.00	2.00	0.00	\$0	\$0	8	24	\$1154.00
3. Create information (analyze data and compile/write application	2.00	35.00	10.00	\$0	\$40	8	376	\$16,681.20
4. Review and edit information for accuracy	8.00	32.00	8.00	\$0	\$0	8	384	\$17,098.88
5. Complete paperwork (e.g. submittal letter)	1.00	3.00	3.00	\$0	\$10	8	56	\$2,266.08

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
6. Disclose information (i.e. Federal Register notices)	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
7. Copy, store, file, and maintain information	0.00	0.00	3.00	\$0	\$50	8	24	\$1,048.48
<b>Subtotal (hours and costs)</b>	<b>18</b>	<b>91</b>	<b>24</b>	<b>\$0</b>	<b>\$150</b>	<b>8</b>	<b>1064</b>	<b>\$48,257.84</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 10. No-Discharge Zone Application Review by EPA under 40 CFR 140.4(a)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
b. Clarify questions with EPA	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
Gather Information							0	\$0.00
a. Certification of necessity for greater environmental protection	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
b. pumpout facility map	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
c. Description of pumpout facilities	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
d. Schedule of operating hours of pumpout facilities	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
e. Draft requirements and water depth adjacent to pumpout facilities	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
f. Waste disposal methods for pumpout facilities	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
g. vessel population and vessel usage	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
3. Create information (analyze data and compile/write application	0.00	0.00	0.00	\$0	\$0	8	0	\$0.00
4. Review and edit information for accuracy	4.00	16.00	0.00	\$0	\$0	8	160	\$9,281.60
5. Complete paperwork (e.g. submittal letter)	1.50	0.00	1.50	\$0	\$10	8	24	\$1,429.04
6. Disclose information (i.e. Federal Register notices)	1.00	4.00	2.00	\$0	\$0	8	56	\$2,912.56

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
7. Copy, store, file, and maintain information	0.00	0.00	1.50	\$0	\$50	8	12	\$844.12
<b>Subtotal (hours and costs)</b>	<b>6.5</b>	<b>20</b>	<b>5</b>	<b>\$0</b>	<b>\$60</b>	<b>8</b>	<b>252</b>	<b>\$14,467.32</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 11. State No-Discharge Zone Applications under 40 CFR 140.4(b)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	1.00	5.50	0.00	\$0	\$0	.33	2.145	\$102.98
b. Clarify questions with EPA	0.00	1.00	0.00	\$0	\$50	.33	0.33	\$32.32
2. Gather Information								\$0.00
a. Specification of the waters or portions thereof for which a complete prohibition is desired	1.00	2.00	0.00	\$0	\$0	.33	0.99	\$47.60
b. Identification of water recreational areas	1.00	2.00	0.00	\$0	\$0	.33	0.99	47.60
c. Identification of aquatic sanctuaries	1.00	2.00	0.00	\$0	\$0	.33	0.99	47.60
d. Identification of identifiable fish-spawning and nursery areas	1.00	2.00	0.00	\$0	\$0	.33	0.99	47.60
e. Identification of areas of intensive boating activities	1.00	2.00	0.00	\$0	\$0	.33	0.99	47.60
g. A map of the waters to be designated as an NDZ	1.00	2.00	0.00	\$0	\$0	.33	0.99	47.60
3. Create information (analyze data and compile/write application)	2.00	35.00	10.00	\$0	\$40	.33	15.51	\$688.10
4. Review and edit information for accuracy	8.00	32.00	8.00	\$0	\$0	.33	15.84	\$705.33
5. Complete paperwork (e.g. submittal letter)	1.00	3.00	3.00	\$0	\$10	.33	2.31	\$93.48
6. Disclose information (i.e. Federal	0.00	0.00	0.00	\$0	\$0	.33	0	\$0.00

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Register notices)								
7. Copy, store, file, and maintain information	0.00	0.00	1.50	\$0	\$50	.33	0.495	\$29.87
<b>Subtotal (hours and costs)</b>	<b>18</b>	<b>88.5</b>	<b>22.5</b>	<b>\$0</b>	<b>\$150</b>	<b>.33</b>	<b>42.57</b>	<b>\$1,937.70</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 12. No-Discharge Zone Application Review by EPA under 40 CFR 140.4(b)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	1.00	2.00	0.00	\$0	\$0	.33	0.99	\$60.30
b. Clarify questions with EPA	0.00	0.00	0.00	\$0	\$0	.33	0	\$0.00
2. Gather Information							0	\$0.00
a. Specification of the waters or portions thereof for which a complete prohibition is desired	1.00	3.00	0.00	\$0	\$0	.33	1.32	\$78.01
b. Identification of water recreational areas	1.00	2.00	0.00	\$0	\$0	.33	0.99	\$60.30
c. Identification of aquatic sanctuaries	1.00	3.00	0.00	\$0	\$0	.33	1.32	\$78.01
d. Identification of identifiable fish-spawning and nursery areas	1.00	2.00	0.00	\$0	\$0	.33	0.99	60.30
e. Identification of areas of intensive boating activities	1.00	2.00	0.00	\$0	\$0	.33	0.99	60.30
f. A map of the waters to be designated as an NDZ	1.00	2.00	0.00	\$0	\$0	.33	0.99	60.30
3. Create information (analyze data and compile/write application)	0.00	0.00	0.00	\$0	\$0	.33	0	\$0.00
4. Review and edit information for accuracy	1.00	4.00	2.00	\$0	\$0	.33	2.31	\$120.14
5. Complete paperwork (e.g. submittal letter)	0.00	1.00	0.00	\$0	\$10	.33	0.33	\$21.01
6. Disclose information (i.e. Federal	1.00	4.00	2.00	\$0	\$0	.33	2.31	\$120.14

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
Register notices, publish regulation)								
7. Copy, store, file, and maintain information	0.00	0.00	1.50	\$0	\$50	.33	0.495	\$34.82
<b>Subtotal (hours and costs)</b>	<b>9</b>	<b>25</b>	<b>5.5</b>	<b>\$0</b>	<b>\$60</b>	<b>.33</b>	<b>13.035</b>	<b>\$753.64</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 13. State No-Discharge Zone Applications under 40 CFR 140.4(c)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	2.00	16.00	0.00	\$0	\$0	1	18	\$863.90
b. Clarify questions with EPA	0.00	3.00	0.00	\$0	\$50	1	3	\$193.85
2. Gather Information								\$0.00
a. Specification of the waters or portions thereof for which a complete prohibition is desired	1.00	6.00	0.00	\$0	\$0	1	7	\$336.05
b. Specification and description of the location of the drinking water supply intake(s) and the community served by the intakes	1.00	3.00	0.00	\$0	\$0	1	4	\$192.20
c. A map of the waters to be designated as a drinking water intake zone	1.00	3.00	0.00	\$0	\$0	1	4	\$192.20
d. A statement justifying the size of the requested drinking water intake zone	1.00	2.00	0.00	\$0	\$0	1	3	\$144.25
3. Create information (analyze data and compile/write application	2.00	35.00	10.00	\$0	\$40	1	47	\$2085.15
4. Review and edit information for accuracy	8.00	32.00	8.00	\$0	\$10	1	48	\$2,147.36
5. Complete paperwork (e.g. submittal letter)	1.00	3.00	3.00	\$0	\$0	1	7	\$273.26

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$48.35/hr	Technical \$47.95/hr	Clerical \$27.02/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
6. Disclose information (i.e. Federal Register notices)	0.00	0.00	0.00	\$0	\$0	1	0	\$0.00
7. Copy, store, file, and maintain information	0.00	0.00	1.50	\$0	\$50	1	1.5	\$90.53
<b>Subtotal (hours and costs)</b>	<b>17</b>	<b>103</b>	<b>22.5</b>	<b>\$0</b>	<b>\$150</b>	<b>1</b>	<b>142.5</b>	<b>\$6,518.75</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 14. No-Discharge Zone Application Review by EPA under 40 CFR 140.4(c)**

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
1. Request Preparation								
a. Read regulations; review guidance document; plan strategy	1.00	2.00	0.00	\$0	\$0	1	3	\$182.73
b. Clarify questions with EPA	0.00	0.00	0.00	\$0	\$0	1	0	\$0.00
2. Gather Information							0	\$0.00
a. Specification of the waters or portions thereof for which a complete prohibition is desired	1.00	3.00	0.00	\$0	\$0	1	4	\$236.39
b. Specification and description of the location of the drinking water supply intake(s) and the community served by the intakes	1.00	2.00	0.00	\$0	\$0	1	3	\$182.73
c. A map of the waters to be designated as a drinking water intake zone	1.00	3.00	0.00	\$0	\$0	1	4	\$236.39
d. A statement justifying the size of the requested drinking water intake zone	1.00	2.00	0.00	\$0	\$0	1	3	\$182.73
3. Create information (analyze data and compile/write application)	0.00	0.00	0.00	\$0	\$0	1	0	\$0.00
4. Review and edit information for accuracy	1.00	3.00	0.00	\$0	\$0	1	4	\$236.39
5. Complete paperwork (e.g. submittal letter)	1.00	3.00	0.00	\$0	\$10	1	4	\$246.39

Information Collection Activity	Hours and Costs Per Respondent					Total Hours and Costs Per Year		
	Mgmt. \$75.41/hr	Technical \$53.66/hr	Clerical \$37.01/hr	Capital/ Startup Cost (\$)	O & M Cost (\$)*	Number Respon. (N = 1)	Total Hours/ Year	Total Cost/ Year (\$)
6. Disclose information (i.e. Federal Register notices, publish regulation)	3.00	12.00	6.00	\$0	\$0	1	21	\$1,092.21
7. Copy, store, file, and maintain information	0.00	0.00	0.00	\$0	\$50	1	0	\$50.00
<b>Subtotal (hours and costs)</b>	<b>10</b>	<b>30</b>	<b>6</b>	<b>\$0</b>	<b>\$60</b>	<b>1</b>	<b>46</b>	<b>\$2,645.96</b>

\* O&M costs include photocopying, postage, telephone, etc.

**Table 15. Total Estimated Respondent (State Agency) Burden and Cost Summary for Establishing NDZs for Vessel Sewage**

	Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
No-discharge Zone under 40 CFR 140.4(a) (Table 9)	8	8	1064.00	\$47,057.84	\$0.00	\$1,200.00
No-discharge Zone under 40 CFR 140.4(b) (Table 11)	1	0.33	43.00	\$1,888.20	\$0.00	\$50.00
No-discharge Zone under 40 CFR 140.4(c)] (Table 13)	1	1	143.00	\$6,368.75	\$0.00	\$150.00
TOTAL	10	9.33	1250.00	\$55,314.79	\$0.00	\$1,400.00

**Table 16. Total Estimated Agency (EPA) Burden and Cost Summary for Establishing NDZs for Vessel Sewage**

	Number of Respondents	Number of Activities Per Year	Total Number of Hours Per Year	Total Labor Cost Per Year (\$)	Total Annual Capital Costs (\$)	Total Annual O&M Costs (\$)
No-discharge Zone under 40 CFR 140.4(a) (Table 10)	8	8	252	\$14,467.32	\$0.00	\$480.00
No-discharge Zone under 40 CFR 140.4(b) (Table 12)	1	0.33	13	\$753.64	\$0.00	\$60.00
No-discharge Zone under 40 CFR 140.4(c) (Table 14)	1	1	46	\$2,645.96	\$0.00	\$60.00
TOTAL	10	9.33	311	\$17,866.92	\$0.00	\$600.00

Attachment A

Summary Table for Information Collection under CWA Section 312

**Table 17: Total CWA Section 312 Estimated Respondent (State Agency) Burden and Cost Summary**

	<b>Number of Respondents Per Year</b>	<b>Number of Activities Per Year</b>	<b>Total Number of Hours Per Year</b>	<b>Total Labor Cost Per Year (\$)</b>	<b>Total Annual Capital Costs (\$)</b>	<b>Total Annual O&amp;M Costs (\$)</b>
<b>TOTAL</b>	16	15.33	2,207.5	\$98,520.32	\$0.00	\$2,300

\* This data is taken from Tables 7 and 15 of this ICR

**Table 18: Total CWA Section 312 Estimated Agency (EPA) Burden and Cost Summary**

	<b>Number of Respondents Per Year</b>	<b>Number of Activities Per Year</b>	<b>Total Number of Hours Per Year</b>	<b>Total Labor Cost Per Year (\$)</b>	<b>Total Annual Capital Costs (\$)</b>	<b>Total Annual O&amp;M Costs (\$)</b>
<b>TOTAL</b>	16	15.33	484	\$27,905.06	\$0.00	\$960

\* This data is taken from Tables 8 and 16 of this ICR

Attachment B

40 CFR 1700 (Uniform National Discharge Standards of the Armed Forces)

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

**Source:** 64 FR 25134, May 10, 1999, unless otherwise noted.

## **Subpart A—Scope**

### **§ 1700.1 Applicability.**

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

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

### **§ 1700.2 Effect.**

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

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

### **§ 1700.3 Definitions.**

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

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

*Discharge incidental to the normal operation of a vessel* means a discharge, including, but not limited to: graywater, bilgewater, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of a vessel; and a discharge in connection with the testing, maintenance, and repair of any of the aforementioned systems whenever the vessel is waterborne, including pier-side. A discharge incidental to normal operation does not include:

- (1) Sewage;
- (2) A discharge of rubbish, trash, or garbage;
- (3) A discharge of air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator;
- (4) A discharge that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act; or
- (5) A discharge containing source, special nuclear, or byproduct materials regulated by the Atomic Energy Act.

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

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

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

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

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

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

## **Subpart B—Discharge Determinations**

## **§ 1700.4 Discharges requiring control.**

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

- (a) Aqueous Film-Forming Foam: the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.
- (b) Catapult Water Brake Tank & Post-Launch Retraction Exhaust: the oily water skimmed from the water tank used to stop the forward motion of an aircraft carrier catapult, and the condensed steam discharged when the catapult is retracted.
- (c) Chain Locker Effluent: the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain.
- (d) Clean Ballast: the seawater taken into, and discharged from, dedicated ballast tanks to maintain the stability of the vessel and to adjust the buoyancy of submarines.
- (e) Compensated Fuel Ballast: the seawater taken into, and discharged from, ballast tanks designed to hold both ballast water and fuel to maintain the stability of the vessel.
- (f) Controllable Pitch Propeller Hydraulic Fluid: the hydraulic fluid that discharges into the surrounding seawater from propeller seals as part of normal operation, and the hydraulic fluid released during routine maintenance of the propellers.
- (g) Deck Runoff: the precipitation, washdowns, and seawater falling on the weather deck of a vessel and discharged overboard through deck openings.
- (h) Dirty Ballast: the seawater taken into, and discharged from, empty fuel tanks to maintain the stability of the vessel.
- (i) Distillation and Reverse Osmosis Brine: the concentrated seawater (brine) produced as a byproduct of the processes used to generate freshwater from seawater.
- (j) Elevator Pit Effluent: the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels.
- (k) Firemain Systems: the seawater pumped through the firemain system for firemain testing, maintenance, and training, and to supply water for the operation of certain vessel systems.
- (l) Gas Turbine Water Wash: the water released from washing gas turbine components.
- (m) Graywater: galley, bath, and shower water, as well as wastewater from lavatory sinks, laundry, interior deck drains, water fountains, and shop sinks.
- (n) Hull Coating Leachate: the constituents that leach, dissolve, ablate, or erode from the paint on the hull into the surrounding seawater.
- (o) Motor Gasoline and Compensating Discharge: the seawater taken into, and discharged from, motor gasoline tanks to eliminate free space where vapors could accumulate.
- (p) Non-Oily machinery wastewater: the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers.
- (q) Photographic Laboratory Drains: the laboratory wastewater resulting from processing of photographic film.
- (r) Seawater Cooling Overboard Discharge: the discharge of seawater from a dedicated system that provides noncontact cooling water for other vessel systems.
- (s) Seawater Piping Biofouling Prevention: the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels.
- (t) Small Boat Engine Wet Exhaust: the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine.
- (u) Sonar Dome Discharge: the leaching of antifoulant materials into the surrounding seawater and the release of seawater or freshwater retained within the sonar dome.
- (v) Submarine Bilgewater: the wastewater from a variety of sources that accumulates in the lowest part of the submarine (i.e., bilge).
- (w) Surface Vessel Bilgewater/Oil-Water Separator Effluent: the wastewater from a variety of sources that accumulates in the lowest part of the vessel (the bilge), and the effluent produced when the wastewater is processed by an oil water separator.
- (x) Underwater Ship Husbandry: the materials discharged during the inspection, maintenance, cleaning, and repair of hulls performed while the vessel is waterborne.
- (y) Welldeck Discharges: the water that accumulates from seawater flooding of the docking well (welldeck) of a vessel used to transport, load, and unload amphibious vessels, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck.

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

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have determined that it is not reasonable or practicable to require use of a Marine Pollution Control Device to mitigate adverse impacts on the marine environment:

- (a) Boiler Blowdown: the water and steam discharged when a steam boiler is blown down, or when a steam safety valve is tested.
- (b) Catapult Wet Accumulator Discharge: the water discharged from a catapult wet accumulator, which stores a steam/water mixture for launching aircraft from an aircraft carrier.

- (c) Cathodic Protection: the constituents released into surrounding water from sacrificial anode or impressed current cathodic hull corrosion protection systems.
- (d) Freshwater Lay-up: the potable water that is discharged from the seawater cooling system while the vessel is in port, and the cooling system is in lay-up mode (a standby mode where seawater in the system is replaced with potable water for corrosion protection).
- (e) Mine Countermeasures Equipment Lubrication: the constituents released into the surrounding seawater by erosion or dissolution from lubricated mine countermeasures equipment when the equipment is deployed and towed.
- (f) Portable Damage Control Drain Pump Discharge: the seawater pumped through the portable damage control drain pump and discharged overboard during testing, maintenance, and training activities.
- (g) Portable Damage Control Drain Pump Wet Exhaust: the seawater mixed and discharged with portable damage control drain pump exhaust to cool the exhaust and quiet the engine.
- (h) Refrigeration and Air Conditioning Condensate: the drainage of condensed moisture from air conditioning units, refrigerators, freezers, and refrigerated spaces.
- (i) Rudder Bearing Lubrication: the oil or grease released by the erosion or dissolution from lubricated bearings that support the rudder and allow it to turn freely.
- (j) Steam Condensate: the condensed steam discharged from a vessel in port, where the steam originates from port facilities.
- (k) Stern Tube Seals and Underwater Bearing Lubrication: the seawater pumped through stern tube seals and underwater bearings to lubricate and cool them during normal operation.
- (l) Submarine Acoustic Countermeasures Launcher Discharge: the seawater that is mixed with acoustic countermeasure device propulsion gas following a countermeasure launch that is then exchanged with surrounding seawater, or partially drained when the launch assembly is removed from the submarine for maintenance.
- (m) Submarine Emergency Diesel Engine Wet Exhaust: the seawater that is mixed and discharged with submarine emergency diesel engine exhaust to cool the exhaust and quiet the engine.
- (n) Submarine Outboard Equipment Grease and External Hydraulics: the grease released into the surrounding seawater by erosion or dissolution from submarine equipment exposed to seawater.

## ***Subpart C—Effect on States***

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

- (a) After the effective date of a final rule determining that it is not reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge, except that States may establish a no-discharge zone by State prohibition (as provided in §1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in §1700.10).
- (b)(1) After the effective date of a final rule determining that it is reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States may apply for a no-discharge zone by EPA prohibition (as provided in §1700.10) for that discharge.
- (2) After the effective date of a final rule promulgated by the Secretary governing the design, construction, installation, and use of a Marine Pollution Control Device for a discharge listed in §1700.4, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge except that States may establish a no-discharge zone by State prohibition (as provided in §1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in §1700.10).
- (c) The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in §1700.4 or §1700.5, or review a Federal standard of performance for a Marine Pollution Control Device.

## ***No-Discharge Zones***

### ***§ 1700.7 No-discharge zones.***

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

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

- (a) A no-discharge zone may be established by State prohibition for any discharge listed in §1700.4 or §1700.5 following the procedures in §1700.9. A no-discharge zone established by a State using these procedures may apply only to those discharges that have been preempted from other State or local regulation pursuant to §1700.6.
- (b) A no-discharge zone may be established by EPA prohibition for any discharge listed in §1700.4 or §1700.5 following the procedures in §1700.10.

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

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

- (1) The discharge from §1700.4 or §1700.5 to be prohibited within the no-discharge zone.
  - (2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.
  - (3) A determination that the protection and enhancement of the waters described in paragraph (a)(2) of this section require greater environmental protection than provided by existing Federal standards.
  - (4) A complete description of the facilities reasonably available for collecting the discharge including:
    - (i) A map showing their location(s) and a written location description.
    - (ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.
    - (iii) The schedule of operating hours of the facilities.
    - (iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.
    - (v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.
  - (5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying the prohibition to all vessels in the area, the State must demonstrate the technical or environmental basis for applying the prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:
    - (i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.
    - (ii) A description of State efforts to control the discharge from non-Armed Forces vessels.
- (b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the two determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of any prohibition on Armed Forces vessels.
- (1) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.
  - (2) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessels.
- (c) EPA will notify the State in writing of the result of the determinations under paragraph (b) of this section, and will provide a written explanation of any negative determinations. A no-discharge zone established by State prohibition will not go into effect until EPA determines that the conditions of paragraph (b) of this section have been met.

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

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

- (1) The discharge from §1700.4 or §1700.5 to be prohibited within the no-discharge zone.
- (2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.
- (3) A technical analysis showing why protection and enhancement of the waters described in paragraph (a)(2) of this section require a prohibition of the discharge. The analysis must provide specific information on why the discharge adversely impacts the zone and how prohibition will protect the zone. In addition, the analysis should characterize any sensitive areas, such as aquatic sanctuaries, fish-spawning and nursery areas, pristine areas, areas not meeting water quality standards, drinking water intakes, and recreational areas.
- (4) A complete description of the facilities reasonably available for collecting the discharge including:
  - (i) A map showing their location(s) and a written location description.
  - (ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.
  - (iii) The schedule of operating hours of the facilities.
  - (iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.
  - (v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.
- (5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying a prohibition to other vessels in the area, the State must demonstrate the technical or environmental basis for applying a prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

- (i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.
  - (ii) A description of State efforts to control the discharge from non-Armed Forces vessels.
- (b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the three determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of the prohibition on Armed Forces vessels.
- (1) The protection and enhancement of the specified waters require a prohibition of the discharge.
  - (2) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.
  - (3) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, or the vessels.
- (c) If the three conditions in paragraph (b) of this section are met, EPA will by regulation establish the no-discharge zone. If the conditions in paragraphs (b) (1) and (3) of this section are met, but the condition in paragraph (b)(2) of this section is not met, EPA may establish the no-discharge zone if it determines that the significance of the waters and the potential impact of the discharge are of sufficient magnitude to warrant any resulting constraints on Armed Forces vessels.
- (d) EPA will notify the State of its decision on the no-discharge zone application in writing. If EPA approves the no-discharge zone application, EPA will by regulation establish the no-discharge zone by modification to this part. A no-discharge zone established by EPA prohibition will not go into effect until the effective date of the regulation.

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

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

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

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

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

- (a) The discharge from §1700.4 or §1700.5 for which a change in determination is requested, or the performance standard from §1700.14 for which review is requested.
- (b) The scientific and technical information on which the petition is based.
- (c) A detailed explanation of why the State believes that consideration of the new information should result in a change to the determination or the standard on a nationwide basis, and an explanation of how the new information is relevant to one or more of the following factors:
  - (1) The nature of the discharge.
  - (2) The environmental effects of the discharge.
  - (3) The practicability of using a Marine Pollution Control Device.
  - (4) The effect that installation or use of the Marine Pollution Control Device would have on the operation or operational capability of the vessel.
  - (5) Applicable United States law.
  - (6) Applicable international standards.
  - (7) The economic costs of the installation and use of the Marine Pollution Control Device.

### ***§ 1700.13 Petition decisions.***

The Administrator and the Secretary will evaluate the petition and grant or deny the petition no later than two years after the date of receipt of the petition. If the Administrator and Secretary grant the petition, they will undertake rulemaking to amend this part. If the Administrator and Secretary deny the petition, they will provide the State with a written explanation of why they denied it.

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

### ***§ 1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [Reserved]***



Attachment C

CWA Section 312 (Marine Sanitation Devices)

## Sec. 312 FEDERAL WATER POLLUTION CONTROL ACT

### MARINE SANITATION DEVICES

SEC. 312. (a) For the purpose of this section, the term—

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

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

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

(4) “United States” includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,

Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

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

(6) “sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain

body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

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

(8) “person” means an individual, partnership, firm, corporation, association, or agency of the United States, but does

not include an individual on board a public vessel;

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

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

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

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

(A) means a discharge, including—

(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and (B) does not include—

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

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

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on the date of the enactment of subsection (n));

(13) “marine pollution control device” means any equipment or management practice, for installation or use on board

a vessel of the Armed Forces, that is—

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

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

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

(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

(B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph

(A).

(b)(1) As soon as possible, after the enactment of this section and subject to the provisions of section 104(j) of this Act, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereinafter in this section referred to as “standards”) which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities.

Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

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

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

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 304(d) of this Act. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

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

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

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

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

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

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

such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines

that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

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

(B) Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

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

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of

the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

(h) After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

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

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

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

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

(i) The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or

resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Any person who violates subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable to a civil penalty of not more than \$5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than \$2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section. The provisions of this section may also be enforced by a State.

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

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

(n) UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES.—

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

(2) DETERMINATION OF DISCHARGES REQUIRED TO BE CONTROLLED BY MARINE POLLUTION CONTROL DEVICES.—

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

(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Administrator and the Secretary of Defense shall take into consideration—

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

(3) PERFORMANCE STANDARDS FOR MARINE POLLUTION CONTROL DEVICES.—

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

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

(C) CLASSES, TYPES, AND SIZES OF VESSELS.—The standards promulgated under this paragraph may—

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

(ii) distinguish between new and existing vessels; and

(iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

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

(5) DEADLINES; EFFECTIVE DATE.—

(A) DETERMINATIONS.—The Administrator and the Secretary of Defense shall—

(i) make the initial determinations under paragraph

(2) not later than 2 years after the date of the enactment of this subsection; and

(ii) every 5 years—

(I) review the determinations; and

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

(B) STANDARDS.—The Administrator and the Secretary of Defense shall—

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

(ii) every 5 years—

(I) review the standards; and

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

(C) REGULATIONS.—The Secretary of Defense shall promulgate regulations with respect to a marine pollution control device under paragraph (4) as soon as practicable after the Administrator and the Secretary of Defense promulgate standards with respect to the device under paragraph

(3), but not later than 1 year after the Administrator and the Secretary of Defense promulgate the standards. The regulations promulgated by the Secretary of Defense under paragraph (4) shall become effective upon promulgation unless another effective date is specified in the regulations.

(D) PETITION FOR REVIEW.—The Governor of any State may submit a petition requesting that the Secretary of Defense

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

(6) EFFECT ON OTHER LAWS.— (A) PROHIBITION ON REGULATION BY STATES OR POLITICAL SUBDIVISIONS OF STATES.— Beginning on the effective date of—

(i) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(ii) regulations promulgated by the Secretary of Defense under paragraph (4); except as provided in paragraph (7), neither a State nor a political subdivision of a State may adopt or enforce any statute or regulation of the State or political subdivision with respect to the discharge or the design, construction, installation, or use of any marine pollution control device required to control discharges from a vessel of the Armed Forces.

(B) FEDERAL LAWS.—This subsection shall not affect the application of section 311 to discharges incidental to the normal operation of a vessel.

(7) ESTABLISHMENT OF STATE NO-DISCHARGE ZONES.—

(A) STATE PROHIBITION.—

(i) IN GENERAL.—After the effective date of— (I) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

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

if a State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more discharges incidental

to the normal operation of a vessel, whether treated or not treated, into the waters. No prohibition shall apply until the Administrator makes the determinations described in subclauses (II) and (III) of subparagraph (B)(i).

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

(B) PROHIBITION BY THE ADMINISTRATOR.—

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

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

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

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

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

(C) APPLICABILITY TO FOREIGN FLAGGED VESSELS.—A prohibition under this paragraph—

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

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

(8) PROHIBITION RELATING TO VESSELS OF THE ARMED FORCES.—After the effective date of the regulations promulgated

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

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

or

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

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

(33 U.S.C. 1322)

Attachment D

40 CFR 140 (Marine Sanitation Device Standard)

### **§ 140.1 Definitions.**

**For the purpose of these standards the following definitions shall apply:**

- (a) Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;**
- (b) Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping;**
- (c) Marine sanitation device includes any equipment for installation onboard a vessel and which is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage;**
- (d) Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on waters of the United States;**
- (e) New vessel refers to any vessel on which construction was initiated on or after January 30, 1975;**
- (f) Existing vessel refers to any vessel on which construction was initiated before January 30, 1975;**
- (g) Fecal coliform bacteria are those organisms associated with the intestines of warm-blooded animals that are commonly used to indicate the presence of fecal material and the potential presence of organisms capable of causing human disease.**

### **§ 140.2 Scope of standard.**

**The standard adopted herein applies only to vessels on which a marine sanitation device has been installed. The standard does not require the installation of a marine sanitation device on any vessel that is not so equipped. The standard applies to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security.**

### **§ 140.3 Standard.**

- (a) (1) In freshwater lakes, freshwater reservoirs or other freshwater impoundments whose inlets or outlets are such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of navigation by interstate vessel traffic subject to this regulation, marine sanitation devices certified by the U.S. Coast Guard (see 33 CFR part 159, published in 40 FR 4622, January 30, 1975), installed on all vessels shall be designed and operated to prevent the overboard discharge of sewage, treated or untreated, or of any waste derived from sewage. This shall not be construed to prohibit the carriage of Coast Guard-certified flow-through treatment devices which have been secured so as to prevent such discharges.**
- (2) In all other waters, Coast Guard-certified marine sanitation devices installed on all vessels shall be designed and operated to either retain, dispose of, or discharge sewage. If the device has a discharge, subject to paragraph (d) of this section, the effluent shall not have a fecal coliform bacterial count of greater than 1,000 per 100 milliliters nor visible floating solids. Waters where a Coast Guard-certified marine sanitation device permitting discharge is allowed include coastal waters and estuaries, the Great Lakes and inter-connected waterways, fresh-water lakes and impoundments accessible through locks, and other flowing waters that are navigable interstate by vessels subject to this regulation.**

**(b) This standard shall become effective on January 30, 1977 for new vessels and on January 30, 1980 for existing vessels (or, in the case of vessels owned and operated by the Department of Defense, two years and five years, for new and existing vessels, respectively, after promulgation of implementing regulations by the Secretary of Defense under section 312(d) of the Act).**

**(c) Any vessel which is equipped as of the date of promulgation of this regulation with a Coast Guard-certified flow-through marine sanitation device meeting the requirements of paragraph (a) (2) of this section, shall not be required to comply with the provisions designed to prevent the overboard discharge of sewage, treated or untreated, in paragraph (a)(1) of this section, for the operable life of that device.**

**(d) After January 30, 1980, subject to paragraphs (e) and (f) of this section, marine sanitation devices on all vessels on waters that are not subject to a prohibition of the overboard discharge of sewage, treated or untreated, as specified in paragraph (a)(1) of this section, shall be designed and operated to either retain, dispose of, or discharge sewage, and shall be certified by the U.S. Coast Guard. If the device has a discharge, the effluent shall not have a fecal coliform bacterial count of greater than 200 per 100 milliliters, nor suspended solids greater than 150 mg/1.**

**(e) Any existing vessel on waters not subject to a prohibition of the overboard discharge of sewage in paragraph (a)(1) of this section, and which is equipped with a certified device on or before January 30, 1978, shall not be required to comply with paragraph (d) of this section, for the operable life of that device.**

**(f) Any new vessel on waters not subject to the prohibition of the overboard discharge of sewage in paragraph (a)(1) of this section, and on which construction is initiated before January 31, 1980, which is equipped with a marine sanitation device before January 31, 1980, certified under paragraph (a)(2) of this section, shall not be required to comply with paragraph (d) of this section, for the operable life of that device.**

**(g) The degrees of treatment described in paragraphs (a) and (d) of this section are “appropriate standards” for purposes of Coast Guard and Department of Defense certification pursuant to section 312(g)(2) of the Act.**

[41 FR 4453, Jan. 29, 1976, as amended at 60 FR 33932, June 29, 1995]

#### **§ 140.4 Complete prohibition.**

**(a) Prohibition pursuant to CWA section 312(f)(3): a State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into some or all of the waters within such State by making a written application to the Administrator, Environmental Protection Agency, and by receiving the Administrator's affirmative determination pursuant to section 312(f)(3) of the Act. Upon receipt of an application under section 312(f)(3) of the Act, the Administrator will determine within 90 days whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels using such waters are reasonably available. Applications made by States pursuant to section 312(f)(3) of the Act shall include:**

**(1) A certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard;**

**(2) A map showing the location of commercial and recreational pump-out facilities;**

**(3) A description of the location of pump-out facilities within waters designated for no discharge;**

- (4) The general schedule of operating hours of the pump-out facilities;**
- (5) The draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility;**

**(6) Information indicating that treatment of wastes from such pump-out facilities is in conformance with Federal law; and**

**(7) Information on vessel population and vessel usage of the subject waters.**

**(b) Prohibition pursuant to CWA section 312(f)(4)(A):** a State may make a written application to the Administrator, Environmental Protection Agency, under section 312(f)(4)(A) of the Act, for the issuance of a regulation completely prohibiting discharge from a vessel of any sewage, whether treated or not, into particular waters of the United States or specified portions thereof, which waters are located within the boundaries of such State. Such application shall specify with particularity the waters, or portions thereof, for which a complete prohibition is desired. The application shall include identification of water recreational areas, drinking water intakes, aquatic sanctuaries, identifiable fish-spawning and nursery areas, and areas of intensive boating activities. If, on the basis of the State's application and any other information available to him, the Administrator is unable to make a finding that the waters listed in the application require a complete prohibition of any discharge in the waters or portions thereof covered by the application, he shall state the reasons why he cannot make such a finding, and shall deny the application. If the Administrator makes a finding that the waters listed in the application require a complete prohibition of any discharge in all or any part of the waters or portions thereof covered by the State's application, he shall publish notice of such findings together with a notice of proposed rule making, and then shall proceed in accordance with 5 U.S.C. 553. If the Administrator's finding is that applicable water quality standards require a complete prohibition covering a more restricted or more expanded area than that applied for by the State, he shall state the reasons why his finding differs in scope from that requested in the State's application.

**(1) For the following waters the discharge from a vessel of any sewage (whether treated or not) is completely prohibited pursuant to CWA section 312(f)(4)(A):**

**(i) Boundary Waters Canoe Area, formerly designated as the Superior, Little Indian Sioux, and Caribou Roadless Areas, in the Superior National Forest, Minnesota, as described in 16 U.S.C. 577–577d1.**

**(ii) Waters of the State of Florida within the boundaries of the Florida Keys National Marine Sanctuary as delineated on a map of the Sanctuary at <http://www.fknms.nos.noaa.gov/>.**

**(c)(1) Prohibition pursuant to CWA section 312(f)(4)(B):** A State may make written application to the Administrator of the Environmental Protection Agency under section 312(f)(4)(B) of the Act for the issuance of a regulation establishing a drinking water intake no discharge zone which completely prohibits discharge from a vessel of any sewage, whether treated or untreated, into that zone in particular waters, or portions thereof, within such State. Such application shall:

**(i) Identify and describe exactly and in detail the location of the drinking water supply intake(s) and the community served by the intake(s), including average and maximum expected amounts of inflow;**

**(ii) Specify and describe exactly and in detail, the waters, or portions thereof, for which a complete prohibition is desired, and where appropriate, average, maximum and low flows in million gallons per day (MGD) or the metric equivalent;**

- (iii) Include a map, either a USGS topographic quadrant map or a NOAA nautical chart, as applicable, clearly marking by latitude and longitude the waters or portions thereof to be designated a drinking water intake zone; and
- (iv) Include a statement of basis justifying the size of the requested drinking water intake zone, for example, identifying areas of intensive boating activities.

(2) If the Administrator finds that a complete prohibition is appropriate under this paragraph, he or she shall publish notice of such finding together with a notice of proposed rulemaking, and then shall proceed in accordance with 5 U.S.C. 553. If the Administrator's finding is that a complete prohibition covering a more restricted or more expanded area than that applied for by the State is appropriate, he or she shall also include a statement of the reasons why the finding differs in scope from that requested in the State's application.

(3) If the Administrator finds that a complete prohibition is inappropriate under this paragraph, he or she shall deny the application and state the reasons for such denial.

(4) For the following waters the discharge from a vessel of any sewage, whether treated or not, is completely prohibited pursuant to CWA section 312(f)(4)(B):

(i) Two portions of the Hudson River in New York State, the first is bounded by an east-west line through the most northern confluence of the Mohawk River which will be designated by the Troy-Waterford Bridge (126th Street Bridge) on the south and Lock 2 on the north, and the second of which is bounded on the north by the southern end of Houghtaling Island and on the south by a line between the Village of Roseton on the western shore and Low Point on the eastern shore in the vicinity of Chelsea, as described in Items 2 and 3 of 6 NYCRR Part 858.4.

(ii) [Reserved]

[41 FR 4453, Jan. 29, 1976, as amended at 42 FR 43837, Aug. 31, 1977; 60 FR 63945, Dec. 13, 1995; 63 FR 1320, Jan. 8, 1998; 67 FR 35743, May 21, 2002]

#### § 140.5 Analytical procedures.

In determining the composition and quality of effluent discharge from marine sanitation devices, the procedures contained in 40 CFR part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," or subsequent revisions or amendments thereto, shall be employed.