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### UNIFORM NATIONAL DISCHARGE STANDARDS FOR ARMED FORCES VESSELS ACT OF 1995

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JULY 13 (legislative day, JULY 10), 1995.—Ordered to be printed

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Mr. CHAFEE, from the Committee on Environment and Public  
Works, submitted the following

### REPORT

[To accompany S. 1033]

The Committee on Environment and Public Works reports an original bill (S. 1033) to amend the Federal Water Pollution Control Act to establish uniform national discharge standards for the control of water pollution from vessels of the Armed Forces, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

#### GENERAL STATEMENT

The proposed legislation results from an initiative begun by the Navy in 1990. The Navy wishes to clarify the regulatory status of certain non-sewage discharges from Navy vessels. Vessels are point sources of pollution under the Clean Water Act. Any discharge of pollutants from a point source, including a vessel, into the waters of the United States is prohibited unless specifically permitted under section 402 or 404 of the Act. Notwithstanding this prohibition, discharges from vessels have generally not been subject to the permit requirements. Discharges of sewage are regulated under section 312 through standards for installation and use of marine sanitation devices. These requirements to employ a particular treatment technology have been imposed in lieu of permit requirements for sewage discharges. Most other non-sewage discharges from vessels, including graywater, bilge water and discharges from machinery, are exempt from permit requirements under regulations issued by the Environmental Protection Agency (EPA).

Although EPA regulations generally exempt non-sewage discharges from vessels from the permit requirements of the Act, some coastal states have imposed regulations or inspection programs that may have application to these types of discharges. A series of events in the waters of several coastal states prompted concern at the Navy as to state authorities to regulate these discharges.

The Navy has been working to resolve these questions by establishing Federal standards for non-sewage discharges from vessels of the Armed Forces. These efforts have included consultations with the states and other Federal agencies and a dialog with a broad section of the interested public.

On June 8, 1995, the Navy transmitted to the Vice President and the Speaker of the House a proposed bill that, if enacted, would direct the Secretary of Defense and the Administrator of the EPA to develop standards and regulations applicable to non-sewage discharges from vessels of the Armed Forces.

#### SUMMARY OF THE LEGISLATION

The proposed bill amends section 312 of the Federal Water Pollution Control Act to direct the Secretary of Defense and the Administrator of the EPA to develop standards and regulations to address the environmental effects of non-sewage discharges from vessels of the Armed Forces. These discharges are currently exempt from control under the Federal Water Pollution Control Act based on regulations issued by EPA. Sewage discharges from these vessels are already regulated under section 312. The legislative authority for the new requirements parallels the structure of section 312 as it is now written.

The Department of Defense (DOD) and EPA are to act jointly to identify the non-sewage discharges that are to be subject to control. These discharges may include graywater (sink and shower water), bilge water (from the hold of the vessel), boiler blow down waste streams, wastewater from vessel cleaning operations, discharges from other mechanical and maintenance operations and releases of hazardous substances from hull coatings. The discharges are termed "discharges incidental to the normal operation of a vessel" by the proposed legislation. The National Oceanic and Atmospheric Administration (NOAA) and the interested coastal states are to be consulted prior to a final determination of the discharges to be addressed.

In a second step, EPA and DOD are to jointly identify the technologies and practices that are to be used to control discharges of concern. DOD and EPA are to consider a series of factors in making this determination including the environmental effects of the discharge, the operational constraints of the vessel design and mission and cost. The required technologies and practices are termed "marine pollution control devices" by the proposed legislation. As with the identification of discharges to be regulated, EPA and DOD are to consult with the states and other Federal agencies in making the determination.

In a third step, the Secretary of Defense issues regulations requiring the installation and operation of particular equipment and practices on vessels. These requirements may vary by vessel type and age.

Once standards and regulations have been imposed on discharges by DOD and EPA, State laws and regulations that would apply to the same discharges are preempted. States are, however, authorized to establish “no discharge zones” that would prohibit all discharges of a particular type. Vessels of the Armed Forces would be required to comply with these prohibitions provided that they apply to all vessels, including commercial vessels, and that there are adequate facilities to remove the wastes that may not be discharged. This authority for States to establish no discharge zones is similar to authority available to the States under current law with respect to sewage discharges.

The standards and regulations issued by DOD and EPA are to be enforced by the U.S. Coast Guard, as are the other provisions of section 312. Violations may be subject to administrative penalties of up to \$5,000 per violation. The Coast Guard may request assistance from the states in carrying out enforcement functions.

The bill also amends section 502(6) of the Clean Water Act to exclude from the definition of pollutant the non-sewage discharges that are subject to the new provisions of section 312. The effect of this amendment is to remove the statutory requirement for a permit for these point source discharges to the waters of the United States.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides that the bill, if enacted, may be referred to as the “Uniform National Discharge Standards for Armed Forces Vessels Act of 1995”.

##### *Section 2. Purposes*

Section 2 of the bill sets forth the purposes including: enhancing the operational flexibility of Armed Forces vessels; stimulating the development of new pollution control technology for vessels; and advancing the Navy policy to operate Environmentally Sound Ships.

##### *Section 3. Uniform National Discharge Standards Development*

Section 3 of the bill amends section 312 of the Federal Water Pollution Control Act to require the Secretary of Defense and the Administrator of the EPA to promulgate standards and regulations with respect to non-sewage discharges from Armed Forces vessels. The bill would add a new subsection (n) to section 312. The subsection would only address discharges from vessels of the Armed Services and vessels operated by the Department of Transportation that are equivalent to DOD vessels. The subsection only addresses the non-sewage discharges from these vessels, because sewage discharges are regulated under other provisions of section 312.

As with other provisions of section 312, the Secretary of Defense may exempt certain vessels or classes of vessels from compliance with the new subsection (n), if the Secretary determines that compliance would not be in the national security interests of the United States.

The standards and regulations to be issued under subsection (n) would be developed jointly by DOD and EPA in three steps. In the first step, DOD and EPA are to identify the specific discharges that should be addressed by pollution control regulations. The discharges to be reviewed for possible control include graywater, bilge water, cooling water, deck runoff, ballast water, wastewaters from various other ship operational and maintenance systems, and releases that may occur from hull coatings. To determine which discharges are to be controlled DOD and EPA are to consider a series of factors including: the nature of the discharge; the adverse environmental effects of the discharge; the practicability of using pollution control equipment or management practices to reduce the environmental effects of the discharge; the impact of the equipment or practice on the operational capability of the vessel; applicable law and international standards; and the economic costs of the pollution control technology or practice.

One of the factors to be considered in determining which discharges should be subject to control is "the practicability of using the marine control device". Although the term "practicability" is used in other provisions of the Federal Water Pollution Control Act as a test of the economic feasibility of a particular control technology, use of the term "practicability" here has no economic or cost implications. As used here, the term "practicability" relates only to the operational feasibility of the equipment or practice considered in the context of the mission of the vessel.

The Secretary of Defense and the Administrator are to promulgate these determinations after notice and opportunity for public comment as provided in the Administrative Procedures Act (APA). Although the APA does not generally apply directly to actions such as this taken with respect to military functions, the bill requires DOD and EPA to follow APA procedures to assure that there is broad consultation in identifying the discharges to be regulated. Determinations made by DOD and EPA under subsection (n) will preempt authority of the States to regulate these discharges. A determination that a discharge should not be regulated will also bar regulation by a State. Therefore, a full APA review is an appropriate procedural safeguard.

In addition to the notice and comment procedures, DOD and EPA are to consult with the interested States, the Secretary of Transportation and the Secretary of Commerce before making final determinations on the discharges to be regulated. The National Oceanic and Atmospheric Administration has significant expertise with respect to the environmental effects of pollution in coastal and marine waters. The Department of Transportation is included in the consultation process because the Coast Guard currently enforces other pollution laws that may have adverse environmental effects on marine and coastal waters and will be the enforcement authority for these provisions.

Subsection (n)(3) directs the Secretary of Defense and the Administrator to promulgate standards applicable to the discharges which have been selected for regulation under paragraph (2). These standards are to govern the performance of the marine pollution control devices (which may be either equipment or practices) that

will be used to reduce the adverse environmental effects of the discharges.

The factors to be considered in selecting performance standards are precisely the same factors as DOD and EPA are to consider when selecting discharges for control (nature of discharge, environmental effect, cost, etc.). Under amendments to section 312(a) the bill establishes a definition for the term "marine pollution control device". This definition provides that the level of control to be achieved by a particular device is to be the most effective level of control that is consistent with the other factors to be considered under paragraph (3).

The performance standards may vary according to the class, type or size of vessel and may distinguish between new and existing vessels. They may also provide for a waiver of the standards for a particular type or size of vessel. These distinctions and waivers are to be based on the same factors that are considered in setting the performance standards and identifying discharges for regulation.

DOD and EPA are to consult with other Federal agencies and the interested States in establishing performance standards. In addition, the standards are to be promulgated only after a notice and comment proceeding similar to an informal rulemaking under the APA.

Subsection (n)(4) establishes the final step in the process by requiring the Secretary of Defense to issue regulations for the installation and use of marine pollution control devices (which may be either equipment or practices) on particular vessels.

Subsection (n)(5) imposes deadlines for DOD and EPA to jointly promulgate determinations, standards of performance and regulations. Initial determinations with respect to the discharges to be regulated are due not later than 2 years after the date of enactment of the subsection. DOD and EPA are to periodically review these determinations (not less often than every 5 years) and are to add to the list of discharges subject to control, if new information indicates that the discharge meets the criteria established by paragraph (2).

Standards of performance for marine pollution control devices applicable to a particular type of discharge are to be issued not later than 2 years after the DOD and EPA determine that the discharge should be controlled.

Finally, DOD is to promulgate regulations providing for the installation and use of marine pollution control devices on particular vessels not later than one year after the date on which standards of performance for the devices are issued. The regulations are to be effective on the date they are promulgated unless the Secretary of Defense establishes some other effective date as part of the regulation.

Subsection (n)(5) authorizes the Governor of any State to submit a petition to DOD and EPA proposing that determinations under paragraph (2) and standards set under paragraph (3) be modified to cover additional discharges or amend the standards to provide greater environmental protection. The petitions must be based on new information that was not considered by DOD and EPA in making the determinations or issuing the standards. DOD and EPA must respond to any petition from a State within 2 years. This

gives the Federal agencies adequate time to review the science and engineering information to determine whether the proposal made in the petition is consistent with the considerations set forth in paragraphs (2) and (3).

Subsection (n)(6) addresses the applicability of other laws to discharges incidental to the normal operation of a vessel to be regulated under the new subsection (n). State laws applicable to these discharges would be preempted under two conditions. First, if the Secretary of Defense and the Administrator determine that a discharge should not be regulated after consideration of the factors listed in subsection (n)(2)(B), the States are preempted from regulation of that discharge at the time that the determination is promulgated. Second, if a discharge is determined to merit control and standards and regulations for a marine pollution control device applicable to the discharge are issued, the States are preempted with respect to regulation of the same discharges on the effective date of the DOD regulation mandating installation or use of the equipment or practice.

Subsection (n)(6)(B), on the other hand, explicitly provides that subsection (n) shall not affect the applicability of any other provision of Federal law, including other provisions of the Federal Water Pollution Control Act, to discharges incidental to the normal operation of a vessel. To the extent that section 311, other sections of the Act or other laws apply to these discharges on their own terms, they would, with one exception, continue to apply if this bill is enacted. The current provisions of the Federal Water Pollution Control Act including sections 301 and 402 that potentially subject these discharges to permit requirements (absent the exemption found at part 122.3 of title 40, Code of Federal Regulations) are set aside by amendments made by section 4 of this bill to section 502(6) of the Act.

Notwithstanding the preemption established by the new subsection (n)(6), States would be authorized under paragraph (7) to establish no discharge zones within which discharges incidental to the normal operation of a vessel may be prohibited. The no discharge zones established by States must be approved by the Administrator upon application by the State. The Administrator is to approve or disapprove any application submitted by a State within 90 days and is to approve an application, if the Administrator determines that protection and enhancement of water quality require the prohibition of discharges, adequate facilities are available to handle the wastes that would otherwise have been discharged, and the prohibition does not discriminate against vessels of the Armed Forces.

The bill is not intended to impose a burden on the States to provide facilities for the wastes from Armed Forces vessels that would otherwise have been discharged. The Administrator may not disapprove an application for a no discharge zone, if all of the other conditions for approving the application have been met and the only deficiency is a lack of facilities to handle wastes from Armed Forces vessels.

Subsection (n)(8) makes the operation of a vessel of the Armed Forces in violation of regulations promulgated under paragraph (4) an unlawful act. This prohibition applies in the navigable waters

of the United States and in the contiguous zone, which generally extends to 12 nautical miles from the baseline. This is consistent with the geographic scope of the requirements and prohibitions established under section 311 of the Federal Water Pollution Control Act.

Subsection (n)(9) provides that the prohibitions established by paragraph (8) be enforced under the existing authorities of section 312.

#### *Section 4. Conforming Amendments*

Section 4 makes several changes in section 312 and other provisions of the Federal Water Pollution Control Act. The definition of the term "person" in section 312(a)(8) is amended to include a reference to the agencies of the United States. This amendment ensures that all of the provisions of section 312, including regulations for marine sanitation devices to treat sewage before discharge, apply to all Federal agencies, including the Armed Forces.

Three definitions are added to section 312(a). The term "discharge incidental to the operation of a vessel" is defined to denote those discharges (other than sewage, solid waste discharged overboard or air emissions) that are potentially subject to control under the new subsection (n). These discharges include graywater, bilge water, cooling water, runoff from the deck, ballast water, other wastewaters from vessel operations and maintenance, and releases from hull coatings.

The amendment to section 312 made by this bill is intended to address discharges that are currently subject to the Federal Water Pollution Control Act as vessels are point sources of discharge, but have been exempt from permit requirements under section 402 of the Act because of provisions of the regulation published at part 122.3 of title 40, Code of Federal Regulations. Discharges that are not exempt from permit requirements under section 402 as the result of this regulation would not be discharges incidental to the normal operation of a vessel and would continue to remain subject to permit and other requirements as point source discharges under the Federal Water Pollution Control Act. This may include discharges associated with maintenance when a vessel is in port and not engaged in transportation.

The second definition added to section 312 is for the term "marine pollution control device". These devices include equipment installed and used or practices used on vessels of the Armed Forces to reduce the adverse environmental impacts of discharges. Standards of performance for these devices are to be set under the new subsection (n)(3) of section 312. Equipment or a practice only qualifies as a marine pollution control device under this definition, if the device is the most effective equipment or practice to reduce the adverse environmental impacts of the discharge, consistent with the considerations set forth in paragraph (3)(B). These considerations include the cost, practicability and effect of the operation of the device on the mission of the vessels for which it is required.

This is not a requirement for best available control technology as mandated for other discharges under the Federal Water Pollution Control Act, because installation and use of the best available technology may not be consistent with the mission and operational

characteristics of an Armed Forces vessel. Taking into account the considerations referenced by the new section 312(n)(3)(B), DOD and EPA are to set performance standards for marine pollution control devices ensuring that the pollution reductions effectuated by the standards are the greatest reductions that can be achieved by the most effective technology consistent with those considerations.

Section 312(a) is also amended to define the term "vessel of the Armed Forces" to include vessels owned and operated by the Department of Defense and vessels owned or operated by the Department of Transportation that are operated in a manner that is equivalent to the operation of a DOD vessel.

Section 312(j) of the Federal Water Pollution Control Act is amended to establish a clear enforcement policy with respect to the new requirements of section 312(n). The prohibitions established in subsection (n)(8) would be enforced by the Coast Guard with a maximum administrative penalty for a violation of \$5000.

Section 502(6) of the Federal Water Pollution Control Act is also amended to exclude discharges incidental to the normal operation of a vessel of the Armed Forces from the meaning of the term "pollutant". This modification is necessary to provide that these discharges are regulated under section 312 and not pursuant to section 301 and 402. The exclusion parallels the treatment of sewage discharges regulated under section 312 of current law.

#### *Section 5. Cooperation in Standards Development*

Section 5 of the bill is a free-standing provision that authorizes DOD and EPA to share resources to accomplish the purposes of this Act. There is concern that the EPA does not have the resources to gather the scientific and engineering information to make sound determinations and set standards under this Act in an expeditious manner. This provision would allow DOD to share information and resources with EPA to ensure that the deadlines established for action under this bill are met.

#### REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

The bill provides that the Secretary of Defense and the Administrator of EPA shall develop standards and regulations to address the environmental effects of non-sewage discharges from vessels of the Armed Forces. The bill will have no regulatory impact on the private sector.

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires that a statement of cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement has been requested. However, it is the opinion of the Committee that in order to expedite the business of the Senate, it is necessary to file this report without the statement.

## CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

## TITLE 33, UNITED STATES CODE

## NAVIGATION AND NAVIGABLE WATERS

\* \* \* \* \*

## CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL

\* \* \* \* \*

## § 1322. Marine sanitation devices

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

(1) \* \* \*

(8) “person” means an individual, partnership, firm, corporation, [or] association, *or agency of the United States*, but does not include an individual on board a public 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 engaged in transportation; and*

(B) does not include—

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

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

(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).

\* \* \* \* \*

(j) PENALTIES.—Any person who violates subsection (g)(1), [of this section] or clause (1) or (2) of subsection (h) [of this section shall], 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.

\* \* \* \* \*

(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 the section.

(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 the 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, 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 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 the discharge.

*(B) FEDERAL LAWS.—This subsection shall not affect the application of any other provision of Federal law, including this Act, 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 determination described in subparagraph (B)(ii).*

*(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.*

\* \* \* \* \*

**§ 1362. Definitions.**

Except as otherwise specifically provided, when used in this chapter:

(1) \* \* \*

(6) The term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “[sewage from vessel] sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces” within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such

State determines that such injection or disposal will not result  
in the degradation of ground or surface water resources.

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