PART 139—DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF VESSELS

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Appendix A to Part 139—Federally-Protected Waters

Subpart A—Scope

§ 139.1 Coverage.

(a) *Vessel discharges.* Except as provided in paragraph (b) of this section, this part applies to:

(1) Any discharge incidental to the normal operation of a vessel; and

(2) Any discharge incidental to the normal operation of a vessel (such as most graywater) that is commingled with sewage, subject to the conditions that:

(i) Nothing in this part prevents a state from regulating sewage discharges; and

(ii) Any such commingled discharge must comply with all applicable requirements of:

(A) This part; and

(B) Any law applicable to the discharge of sewage.

(b) *Exclusions.* This part does not apply to any discharge:

(1) Incidental to the normal operation of:

(i) A vessel of the Armed Forces subject to 33 U.S.C. 1322(n);

(ii) A recreational vessel subject to 33 U.S.C. 1322(o);

(iii) A small vessel or fishing vessel, except that this part applies to any discharge of ballast water from a small vessel or fishing vessel; or

(iv) A floating craft that is permanently moored to a pier, including a floating casino, hotel, restaurant, or bar; or

(2) That results from, or contains material derived from, an activity other than the normal operation of the vessel, such as material resulting from an industrial or manufacturing process onboard the vessel; or

(3) If compliance with this part would compromise the safety of life at sea.

(c) *Area of coverage.* The standards in this part apply to any vessel identified in paragraph (a) of this section, not otherwise excluded in paragraph (b) of this section, while operating in the waters of the United States or the waters of the contiguous zone.

(d) *Effective date.* (1) The standards in this part are effective beginning on the date upon which regulations promulgated by the Secretary governing the design, construction, testing, approval, installation, and use of marine pollution control devices as necessary to ensure compliance with the standards are final, effective, and enforceable.

(2) As of the effective date identified in paragraph (d)(1) of this section, the requirements of the Vessel General Permit and all regulations promulgated by the Secretary pursuant to Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of (16 U.S.C. 4711), including the regulations contained in 46 CFR 162.060 and 33 CFR part 151 subparts C and D, as in effect on December 3, 2018, shall be deemed repealed and have no force or effect.

§ 139.2 Definitions.

The following definitions apply for the purposes of this part. Terms not defined in this section have the meaning as defined under the Clean Water Act (CWA) and applicable regulations.

Administrator means the Administrator of the Environmental Protection Agency. (source: CWA section 101(d)).

Aquatic Nuisance Species (ANS) means a nonindigenous species that threatens the diversity or abundance of a native species; the ecological stability of waters of the United States or the waters of the contiguous zone; or a commercial, agricultural, aquacultural, or

recreational activity that is dependent on waters of the United States or the waters of the contiguous zone. (source: CWA section 312(p)(1)(A)).

Ballast tank means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose. (source: 33 CFR 151.1504).

Ballast water means any water, to include suspended matter and other materials taken onboard a vessel, to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel. The term does not include any substance that is added to that water that is directly related to the operation of a properly functioning ballast water management system. (source: CWA section 312(p)(1)(B)).

Ballast water exchange means the replacement of ballast water in a ballast tank using one of the following methods:

(1) Flow-through exchange, in which ballast water is flushed out by pumping in mid-ocean water at the bottom of the tank if practicable, and continuously overflowing the tank from the top, until three full volumes of tank water have been changed.

(2) Empty and refill exchange, in which ballast water is pumped out until the pump loses suction, after which the ballast tank is refilled with water from the mid-ocean. (source: CWA section 312(p)(1)(D)).

Ballast water management system means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water to kill, render nonviable, or remove organisms; or to avoid the uptake or discharge of organisms. (source: CWA section 312(p)(1)(E)).

Bioaccumulative means the failure to meet one or more of the criteria established in the definition of *Not Bioaccumulative.*

Biodegradable for the following classes of substances, means (all percentages are on a weight/weight concentration basis):

(1) *For oils:* At least 90% of the formulation (for any substances present above 0.1%) demonstrates, within 28 days, either the removal of at least 70% of dissolved organic carbon (DOC), production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand). Up to 5% of the formulation may be non-biodegradable but may not be bioaccumulative. The remaining 5% must be inherently biodegradable.

(2) *For greases:* At least 75% of the formulation (for any substances present above 0.1%) demonstrates, within 28 days, either the removal of at least 70% of DOC, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand). Up to 25% of the formulation may be non-biodegradable or inherently biodegradable but may not be bioaccumulative.

(3) *For soaps, cleaners, and detergents:* A product that demonstrates, within 28 days, either the removal of at least 70% of DOC, production of at least 60% of the theoretical carbon dioxide, or consumption of at least 60% of the theoretical oxygen demand.

(4) *For biocides:* A compound or mixture that, within 28 days, demonstrates removal of at least 70% of DOC and production of at least 60% of the theoretical carbon dioxide.

Biofouling means the accumulation of aquatic organisms such as micro-organisms, plants, and animals on surfaces and structures immersed in or exposed to the aquatic environment. (source: Modified from IMO MEPC.207(62)).

Broom clean means a condition in which care has been taken to prevent or eliminate any visible sheen or concentration of tank, ~~or~~ cargo, garbage, machinery, maintenance, construction or other spills and residues, so that any remaining ~~tank or cargo~~ spills or residues consist only of minimal amounts of dust, powder, or isolated and random pieces, none of which exceeds one inch in diameter. (source: Modified from 33 CFR 151.66).

Comment:
- Required for consistency with intent of Sec. 139. EPA modification of "broom clean" definition as originally applied to bulk dry cargo residues is incomplete.
- "Sheen" added for consistency with similar Bilge discharge provisions under 139.11(b);
- "garbage, machinery…" added for consistency with 139.15 Decks discharge provisions;
- "minimal amounts" added to provide for improved enforceability.

Captain of the Port (COTP) zone means such zone as established by the Secretary pursuant to sections 92, 93, and 633 of title 14, United States Code. (source: CWA section 312(p)(1)(J)).

Commercial vessel means, except as the term is used in § 139.10(g), any vessel 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. (source: CWA section 312(a)(10)). As used in § 139.10(g), the term *commercial vessel* means a vessel operating between:

(1) Two ports or places of destination within the Pacific Region; or

(2) A port or place of destination within the Pacific Region and a port or place of destination on the Pacific Coast of Canada or Mexico north of parallel 20 degrees north latitude, inclusive of the Gulf of California. (source: CWA section 312(p)(10)(C)(i)).

Constructed in respect of a vessel means a stage of construction when:

(1) The keel of a vessel is laid;

(2) Construction identifiable with the specific vessel begins;

(3) Assembly of the vessel has commenced and comprises at least 50 tons or 1% of the estimated mass of all structural material of the vessel, whichever is less; or

(4) The vessel undergoes a major conversion. (source: 33 CFR 151.1504).

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone which extends from the base line of the territorial sea of the United States seaward 24 nautical miles. (source: CWA section 502(9)).

Comment:
- Required to clarify protection distances and for consistency to EEZ definition in application of layman terms on what this distance means.
- Territorial Sea extends 12 nm and Contiguous Zone extends another 12 nm from that.

Discharge means "discharge incidental to the normal operation of a vessel" as defined in this section.

Discharge incidental to the normal operation of a vessel means a discharge, including—

(1) 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

(2) A discharge in connection with the testing, maintenance, and repair of a system described in clause (1):

(i) Whenever the vessel is waterborne; and does not include—

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

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

(3) A discharge that is not covered by § 122.3 of this chapter (as in effect on February 10, 1996). (source: CWA section 312).

Discharge of oil in such quantities as may be harmful means any discharge of oil, including an oily mixture, in such quantities identified in 40 CFR 110.3 and excluding those discharges specified in 40 CFR 110.5.

Empty ballast tank means a tank that has previously held ballast water that has been drained to the limit of the functional or operational capabilities of the tank (such as loss of pump suction); is recorded as empty on a vessel log; and may contain unpumpable residual ballast water and sediment. (source: CWA section 312(p)(1)(K)).

Environmentally Acceptable Lubricant (EAL) means a lubricant, including any oil or grease, that is "biodegradable," "minimally-toxic," and "not bioaccumulative," as these terms are defined in § 139.2.

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 which extends from the base line of the territorial sea of the United States seaward 200 nautical miles, and the equivalent zone of Canada. (source: 33 CFR 151.1504).

Existing vessel means a vessel constructed, or where construction has begun, prior to the date identified in regulations promulgated by the Secretary as described in § 139.1(e).

Federally-protected waters means any waters of the United States or the waters of the contiguous zone subject to federal protection, in whole or in part, for conservation purposes, located within any area listed in Appendix A, as designated under:

(1) National Marine Sanctuaries designated under the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*);

(2) Marine National Monuments designated under the Antiquities Act of 1906;

(3) A unit of the National Park System, including National Preserves and National Monuments, designated by the National Park Service within the U.S. Department of the Interior;

(4) A unit of the National Wildlife Refuge System, including Wetland Management Districts, Waterfowl Production Areas, National Game Preserves, Wildlife Management Areas, and National Fish and Wildlife Refuges designated under the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997;

(5) National Wilderness Areas designated under the Wilderness Act of 1964 (16 U.S.C. 1131-1136); and

(6) Any component designated under the National Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1273.

~~*Fouling rating* means the scale developed by the U.S. Navy (Naval Ships' Technical Manual, Chapter 81, Waterborne Underwater Hull Cleaning of Navy Ships, Revision 5, S9086-CQ-STM-010, 2006) that assigns a fouling rating (FR) number to the 10 most frequently encountered biofouling patterns. Numbers are assigned on a scale from 0 to 100, in 10-point increments, with the lowest number representing a clean hull and the higher numbers representing biofouling organism populations of increasing variety and severity.~~

Comment:
- Required to remove inappropriate ranking system for intent of Sec. 139.
- This scale is inappropriate as a risk metric as its primary purpose is to evaluate operational efficiency and determine cleaning regimes to improve energy efficiency for the U.S. Navy.
- The EPA is using this FR scale only to differentiate between microfouling and macrofouling – whose definitions are added below.

Graywater means drainage from dishwater, shower, laundry, bath, and washbasin drains. It does not include drainage from toilets, urinals, hospitals, animal spaces, and cargo spaces. (source: 33 CFR 151.05).

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and

includes all other bodies of water within the drainage basin of such lakes and connecting channels. (source: CWA section 118(a)(3)(B)).

Great Lakes State means any of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. (source: CWA section 312(p)(1)(M)).

Gross Register Tonnage (GRT) means the gross tonnage measurement of the vessel under the Regulatory Measurement System. (source: 46 CFR 69.9).

Gross Tonnage ITC (GT ITC) means the gross tonnage measurement of the vessel under the Convention Measurement System. (source: 46 CFR 69.9).

Impaired waterbody means a waterbody identified by a state, tribe, or EPA pursuant to section 303(d) of the CWA as not meeting applicable state or tribal water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)) and includes both waters with approved or established Total Maximum Daily Loads (TMDL) and those for which a TMDL has not yet been approved or established.

Inherently biodegradable means the property of being able to be biodegraded when subjected to sunlight, water, and naturally occurring microbes to the following level: Greater than 70% biodegraded after 28 days using OECD Test Guidelines 302C or greater than 20% but less than 60% biodegraded after 28 days using OECD Test Guidelines 301 A-F.

Internal Waters means:

(1) With respect to the United States, the waters shoreward of the territorial sea baseline, including waters of the Great Lakes extending to the maritime boundary with Canada, and

(2) With respect to any other nation, the waters shoreward of its territorial sea baseline, as recognized by the United States. (source: Modified from 33 CFR 2.24 as referenced in CWA section 312(p)(1)(O)).

Live or living, notwithstanding any other provision of law (including regulations), does not:

(1) Include an organism that has been rendered nonviable; or

(2) Preclude the consideration of any method of measuring the concentration of organisms in ballast water that are capable of reproduction. (source: CWA Section 312(p)(6)(D)(i)).

Macrofouling means large, distinct multicellular organisms visible to the human eye such as barnacles, tubeworms, or fronds of algae.

Comment:
- Required for application to Sec. 139.22 revision to replace Fouling Rating definition. Source is IMO Biofouling guidelines definition.

Major conversion means a conversion of an existing vessel:

(1) That substantially alters the dimensions or carrying capacity of the vessel; or

(2) That changes the type of the vessel; or

(3) The intent of which, in the opinion of the government of the country under whose authority the vessel is operating, is substantially to prolong its life; or

(4) Which otherwise so alters the vessel that, if it were a new vessel, it would become subject to relevant provisions of MARPOL not applicable to it as an existing vessel. (source: 33 CFR 151.05).

Marine Growth Prevention System (MGPS) means an anti-fouling system used for the prevention of biofouling accumulation in seawater piping systems and sea chests. (source: Modified from IMO MEPC.207(62)).

Marine Pollution Control Device (MPCD) means any equipment or management practice (or combination of equipment and management practice) for installation and use onboard a vessel that is: Designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and determined by the Administrator and the Secretary to be the most effective equipment or management practice (or combination of equipment and a management practice) to reduce the environmental impacts of the discharge, consistent with the factors considered in developing the standards in this part. (source: CWA section 312(p)(1)(P)).

Master means the officer having command of a vessel. (source: 46 CFR 10.107).

Mid-ocean means greater than 200 nautical miles (NM) from any shore, except when a ballast water exchange or saltwater flush outside of 50 NM is authorized in this part, then it means greater than 50 NM from any shore. ~~For regular maintenance of ballast tanks to remove sediments, it means outside the waters of the United States or the waters of the contiguous zone.~~

Comment:
- Required for consistency with CWA section (p) that spells it "midocean"
- Required to remove a regulation action from definition section

Microfouling means microscopic organisms including bacteria and diatoms and the slimy substances that they produce. Biofouling comprised of only microfouling is commonly referred to as a slime layer.

Comment:
- Required for application to Sec. 139.22 revision to replace Fouling Rating definition. Source is IMO Biofouling guidelines definition.

Minimally-Toxic means, for lubricants (all percentages are on a weight/weight basis):

(1) If both the complete formulation and the main constituents (that is constituents making up greater than or equal to 5% of the complete formulation) are evaluated, then the acute aquatic toxicity of lubricants, other than greases and total loss lubricants, must be at least 100 mg/L and the LC50 of greases and total loss lubricants must be at least 1000 mg/L; or

(2) If each constituent is evaluated, rather than the complete formulation and main constituents, then for each constituent present above 0.1%: Up to 20% of the formulation can have an LC50 greater than 10 mg/L but less than 100 mg/L and an NOEC greater

than 1 mg/L but less than 10 mg/L; up to 5% of the formulation can have an LC50 greater than 1 mg/L but less than 10 mg/L and an NOEC greater than 0.1 mg/L but less than 1 mg/L; and up to 1% of the formulation can have an LC50 less than 1 mg/L and an NOEC less than 0.1 mg/L.

Minimally-toxic, phosphate-free, and biodegradable means properties of a substance or mixture of substances that:

(1) Have an acute aquatic toxicity value corresponding to a concentration greater than 10 ppm;

(2) Do not produce residuals with an LC50 less than 10 ppm;

(3) Are not bioaccumulative;

(4) Do not cause the pH of the receiving water to go below 6.0 or above 9.0;

(5) Contain, by weight, 0.5% or less of phosphates or derivatives of phosphate; and

(6) Are biodegradable.

Minimize means to reduce or eliminate to the extent achievable using any control measure that is technologically available and economically practicable and achievable and supported by demonstrated best management practices such that compliance can be documented in shipboard logs and plans and rationale provided in cases where minimizing could not be achieved.

Comment:
- Required to clarify type of documentation necessary to establish compliance.

Niche Areas means areas on a ship that may be more susceptible to biofouling due to different hydrodynamic forces, susceptibility to coating system wear or damage, or being inadequately, or not, painted (*e.g.,* sea chests, bow thrusters, propeller shafts, inlet gratings, drydock support strips) (source: MEPC.207(62)).

Not bioaccumulative means any of the following:

(1) The partition coefficient in the marine environment is log KOW less than 3 or greater than 7;

(2) The molecular mass is greater than 800 Daltons;

(3) The molecular diameter is greater than 1.5 nanometer;

(4) The bioconcentration factor (BCF) or bioaccumulation factor (BAF) is less than 100 L/kg; or

(5) The polymer with molecular weight fraction below 1,000 g/mol is less than 1%.

Oil means oil of any kind or in any form, including but not limited to any petroleum, fuel oil, environmentally acceptable lubricant, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. (source: CWA section 311(a)(1)).

Oily mixture means a mixture, in any form, with any oil content, including, but not limited to:

(1) Slops from bilges;

(2) Slops from oil cargoes (such as cargo tank washings, oily waste, and oily refuse);

(3) Oil residue; and

(4) Oily ballast water from cargo or fuel oil tanks. (source: 33 CFR 151.05).

Oil-to-Sea interface means any seal or surface on ship-board equipment where the design is such that oil or oily mixtures can escape directly into surrounding waters. Oil-to-sea interfaces are found on equipment that is subject to submersion as well as equipment that can extend overboard.

Organism includes ~~means~~ an animal, including fish and fish eggs and larvae; a plant; a pathogen; a microbe; a virus; a prokaryote (including any archean or bacterium); a fungus; and a protist. (source: CWA section 312(p)(1)(R)).

Comment:
- Required to conform with the definition of "organism" in CWA section 312(p)(1)(R).
- The use of "includes" in the statute permits organisms other than those listed to be considered "organisms" for purposes of section 312(p).
- Substituting the word "means" in the regulation creates a limited list of what can be considered organisms.
- The use of "includes" makes the clear the list in the statute contemplate that types of organisms other than those listed such as fertilized eggs of marine coelenterates or the eggs or larva of animals other than fish could be considered "organisms".

Pacific region means any Federal or state water adjacent to the State of Alaska, California, Hawaii, Oregon, or Washington; and extending from shore. The term includes the entire exclusive economic zone (as defined in Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701)) adjacent to each Pacific Region State. (source: CWA section 312(p)(1)(S)).

Port or place of destination means a port or place to which a vessel is bound to anchor, to moor, or be otherwise secured. (source: CWA section 312(p)(1)(T)).

Reception facility refers to any fixed, floating, or mobile facility capable of receiving ~~wastes and residues from ships and fit for that purpose~~ discharges incidental to the normal operation of a vessel as an alternative or required management practice. When discharging to a reception facility in the United States, discharge is permitted only to reception facilities that have an NPDES permit to discharge for that purpose. (source: Modified from MEPC.1/Circ.834/Rev.1 and 33 CFR 151.2050(i)).

Comment:
- Required for consistency with overall intent of Sec. 139 specific to DINOV and specifically to 139.22(c) for in-water cleaning and capture systems:
- EPA modification of MARPOL definition does not adequately clarify how reception facilities fit within DINOV standards and how MARPOL and USCG apply this term collectively to all waste streams that are generated on board ships during normal operations and during cargo operations.
- The second sentence clarifies USCG provision that transfer of discharge to another vessel or shore facility effectively changes it from DINOV to industrial waste not covered under CWA Sec. 312.
- VGP speaks to reception facilities only in the context of ballast water discharge and identifies those reception facilities as outside purview of permit (Part 4.3(3))

Render nonviable means, with respect to an organism in ballast water, the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment. (source: CWA section 312(p)(1)(U)).

Saltwater flush means the addition of as much mid-ocean water into each empty ballast tank of a vessel as is safe for the vessel and crew; and the mixing of the flush water with residual ballast water and sediment through the motion of the vessel; and the discharge of that mixed water, such that the resultant residual water remaining in the tank has the highest salinity possible; and is at least 30 parts per thousand. A saltwater flush may require more than one fill-mix-empty sequence, particularly if only small quantities of water can be safely taken onboard a vessel at one time. (source: CWA section 312(p)(1)(V)).

Scheduled drydocking means hauling out of a vessel or placing a vessel in a drydock or slipway for ~~an examination of all accessible parts of the vessel's underwater hull and all through-hull fittings~~ vessel inspection, maintenance or other purposes and does not include emergency drydocking and emergency hull repairs. (source: Modified from 46 CFR 31.10-21).

Comment:
- Required for maintaining consistency with intent of Sec. 139

Seagoing vessel means a vessel in commercial service that operates beyond either the boundary line established by 46 CFR part 7 or the St. Lawrence River west of a rhumb line drawn from Cap des Rosiers to Point-Sud-Oeste (West Point), Anticosti Island, and west of a line along 63′ W longitude from Anticosti Island to the north shore of the St. Lawrence River. It does not include a vessel that navigates exclusively on internal waters. (source: Modified from 33 CFR 151.2005).

Secretary means the Secretary of the department in which the Coast Guard is operating. (source: CWA section 312(p)(1)(W)).

Small vessel or fishing vessel means a vessel with a vessel length that is less than 79 feet; or a fishing vessel, fish processing vessel, or fish tender vessel (as those terms are defined in Section 2101 of title 46, United States Code), regardless of the vessel length. (source: CWA section 312(p)(1)(Y)).

Toxic or hazardous materials means any toxic pollutant as defined in 40 CFR 401.15 or any hazardous material as defined in 49 CFR 171.8.

Underway means a vessel is not at anchor, or made fast to the shore, or aground. (source: 33 CFR 83.03).

Vessel General Permit (VGP) means the permit that is the subject of the notice of final permit issuance entitled "Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel" (78 FR 21938 (April 12, 2013)). (source: CWA section 312(p)(1)(Z)).

Vessel length means the horizontal distance between the foremost part of a vessel's stem to the aftermost part of its stern, excluding fittings and attachments. (source: 33 CFR 151.05).

Visible sheen means, with respect to oil and oily mixtures, a silvery or metallic sheen or gloss, increased reflectivity, visual color, iridescence, or an oil slick on the surface of the water.

Voyage means any transit by a vessel traveling from or destined for any United States port or place.

§ 139.3 Other Federal laws.

(a) Except as expressly provided in this part, nothing in this part affects the applicability to a vessel of any other provision of Federal law, including:

(1) Sections 311 and 312 of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.* and 33 U.S.C. 1322 *et seq.*), also known as the CWA;

(2) The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*);

(3) Title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 *et seq.*), also known as the Clean Hulls Act;

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*); and

(5) The National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*) and implementing regulations found at 15 CFR part 922 and 50 CFR part 404.

(b) Nothing in this part affects the authority of the Secretary of Commerce or the Secretary of the Interior to administer any land or waters under the administrative control of the Secretary of Commerce or the Secretary of the Interior, respectively.

(c) Nothing in this part shall be construed to affect, supersede, or relieve the master of any otherwise applicable requirements or prohibitions associated with a vessel's right to innocent passage as provided for under customary international law.

(d) Nothing in this part shall be construed to limit the authority of a State: to enforce a Federal requirement under CWA section 312(k) or other applicable Federal authority; to inspect a vessel pursuant to paragraphs (5)(A)(iii) or (9)(F) of CWA section 312(p) in order to monitor compliance with an applicable requirement of this part; or to enforce an identical or lesser State law under CWA section 312(p)(9)(A)(ii).

Comment:
- Required to clarify construction that restates the authorities provided to States under subparagraphs (A)(ii) and (F) of CWA sec 312(p)(9).
- It is consistent with other provisions of §139.3, including paragraph (b) which provides a clarifying construction that restates the authorities provided to the Sec of Commerce and the Sec of the Interior under subparagraph (E) of CWA sec 312(p)(9).
- The new paragraph (d) will put these restatements from section 312(p)(9) together and will be helpful to users of the regulations.

Subpart B—General Standards for Discharges Incidental to the Normal Operation of a Vessel

§ 139.4 General operation and maintenance.

(a) The requirements in paragraph (b) of this section apply to any discharge incidental to the normal operation of a vessel subject to regulation under this part.

(b) Vessels must implement the following practices:

(1) Minimize discharges including by consideration the use of reception facilities, storage onboard the vessel, or reduced production of pollutants to be discharged.

Comment:
- Required for consistency with Supplementary Information provided with the proposed regulations, setting out actions operators should consider to minimize discharges.
- The proposed insertion clarifies what actions operators should consider to minimize discharges once the final regulations are inserted into the CFR and will make the proposed language accessible to users of the regulations.

(2) Discharge while underway when practical and as far from shore as practical.

(3) Addition of any materials to a discharge, other than for treatment of the discharge, that is not incidental to the normal operation of the vessel is prohibited.

(4) Dilution of any discharge for the purpose of meeting any standard in this part is prohibited.

(5) Any material used onboard that will be subsequently discharged (*e.g.,* disinfectants, cleaners, biocides, coatings, sacrificial anodes) must:

(i) Be used only in the amount necessary to perform the intended function of that material;

(ii) Not contain any materials banned for use in the United States; and

(iii) If subject to FIFRA registration, be used according to the FIFRA label. Proper use includes labeling requirements for proper application sites, rates, frequency of application, and methods; maintenance; removal; and storage and disposal of wastes and containers.

(6) Any toxic or hazardous materials onboard which might wash overboard or dissolve as a result of contact with precipitation or surface water spray must be stored in appropriately sealed, labeled, and secured containers and be located in areas of the vessel that minimize exposure to ocean spray and precipitation consistent with vessel design, unless the master determines this would interfere with essential vessel operations or safety of the vessel or would violate any applicable regulations that establish specifications for safe transportation, handling, carriage, and storage of toxic or hazardous materials.

(7) Containers holding toxic or hazardous materials must not be overfilled and incompatible materials must not be mixed in containers.

(8) The overboard discharge or disposal of containers with toxic or hazardous materials is prohibited.

(9) Prior to washing the cargo compartment or tank and discharging washwater overboard, any cargo compartment or tank must be in broom clean condition or its equivalent, to minimize any remaining residue from these areas.

(10) Topside surfaces (*e.g.,* exposed decks, hull above waterline, and related appurtenances) must be maintained to minimize the discharge of cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior surface preservation.

(11) Painting techniques on topside surfaces must minimize the discharge of paint.

(12) Discharge of unused paint and coatings is prohibited.

(13) Any equipment that may release, drip, leak, or spill oil or oily mixtures, fuel, or other toxic or hazardous materials that may be discharged, including to the bilge, must be maintained to minimize or eliminate the discharges ~~of pollutants~~ incidental to the normal operation of a vessel.

Comment:
- Require for consistency with intent of sec. 139

§ 139.5 ~~Biofouling~~ Hull husbandry and associated niche area management plan.

Comment:
- Required for plan to cover only those aspects of hull husbandry and associated niche areas EPA has jurisdiction over.

(a) The requirements in paragraph (b) of this section apply to any vessel subject to regulation under this part.

(b) A vessel-specific ~~biofouling~~ hull husbandry and associated niche area management plan must be developed and followed to meet environmental standards and all other best management practices and requirements of this section. ~~with a goal to prevent macrofouling, thereby minimizing the potential for the introduction and spread of ANS. A biofouling management plan is a holistic strategy that considers the operational profile of the vessel, identifies the appropriate antifouling systems, and details the biofouling management practices for specific areas of the vessel.~~ The plan elements must prioritize procedures and strategies to prevent macrofouling. Vessel operators must document compliance with the plan in shipboard logs and plans and provide rationale if a discharge could not be minimized or eliminated per a best management practice.

Comment:
- Required to clarify broader intent of a biofouling management plan to include water quality discharges such as paints.
- Removes directives that are the purview of USCG

§ 139.6 Oil management.

(a) The requirements in paragraphs (b) through (d) of this section apply to vessel equipment and operations that use or discharge oil or oily mixtures.

(b) The following discharges are prohibited:

(1) Used or spent oil no longer being used for its intended purpose; and

(2) Oil in such quantities as may be harmful.

(c) During fueling, maintenance, and other vessel operations, control and response measures must be used to prevent, minimize, and contain spills and overflows.

(d) An environmentally acceptable lubricant (EAL) must be used in any oil-to-sea interface unless such use is technically infeasible.

Subpart C—Standards for Specific Discharges Incidental to the Normal Operation of a Vessel

§ 139.10 Ballast tanks.

(a) *Applicability.* Except for any vessel otherwise excluded in paragraph (b) of this section, the requirements in paragraphs (b) through (h) of this section apply to any vessel equipped with one or more ballast tanks.

(b) *Exclusions.* The requirements of § 139.10 do not apply to the following vessels:

(1) A vessel that continuously takes on and discharges ballast water in a flow-through system, if the Administrator determines that system cannot materially contribute to the spread or introduction of ANS;

(2) A vessel in the National Defense Reserve Fleet scheduled for disposal, if the vessel does not have an operable BWMS;

(3) A vessel that discharges ballast water consisting solely of water taken onboard from a public or commercial source that, at the time the water is taken onboard, meets the applicable requirements or permit requirements of the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) or Health Canada's *Guidelines for Canadian Drinking Water Quality;*

(4) A vessel that carries all permanent ballast water in sealed tanks that are not subject to discharge ~~except under emergency circumstances~~; or

Comment:
- Required for consistency with CWA 312(p)(2)(B)(ii)(IV) and already addressed in Sec. 139.1(b)(3)Adds compliance element consistent with definition of "minimize"

(5) A vessel that only discharges ballast water to a reception facility.

(c) *Ballast Water Best Management Practices (BMPs).* (1) Any vessel equipped with ballast tanks must minimize the discharge and uptake of ANS by adhering to the following practices such that compliance can be documented in shipboard logs and plans:

Comment:
- Required for consistency with Minimize definition.

(~~i~~1) Ballast tanks must be periodically flushed and cleaned to remove sediment and biofouling organisms:

(i) Flushed not less than once per year at midocean distance from any shore or when an accumulation of sediment impacts operations;

(ii) Cleaned not less than at every scheduled drydock or when an accumulation of biofouling organisms impact operations;

Comment:
- Numbering errors under (c) – should start with a (1) –(ii) through (iv) don't appear to be sub paragraphs
- Required to clarify "periodically," differences between flushed and cleaned, and to provide clear compliance/enforcement thresholds.

(~~ii~~2) When practicable and available, high sea suction must be used when in port or where clearance to the bottom of the waterbody is less than 5 meters to the lower edge of the sea chest;

(~~iii~~3) When practicable, ballast water pumps must be used in port instead of draining by gravity to empty ballast tanks; and

(~~iv~~4) Any sea chest screen must be:

(i) Adequate in mesh size to prevent the uptake of larger ANS;

(ii) ~~m~~Maintained ~~and fully intact~~ to prevent macrofouling accumulations on screen or in sea chest area.

Comment:
- Required to clarify intent of BMP specific to ANS prevention in keeping with other hull husbandry requirements.
- Maintenance of sea chests and screens for operational performance is outside the purview of Sec. 139.
- Consistent with page 67834 of the Supplementary Information "sea chest screens are designed to keep "the largest living organisms, such as fish, as well as bacteria and viruses associated with these organisms, out of ballast tanks."

(5) Any vessel equipped with ballast tanks must minimize or avoid uptake of ballast water in the following areas and situations:

(i) Areas known to have infestations or populations of harmful organisms and pathogens (e.g., toxic algal blooms);

(ii) Areas near sewage outfalls;

(iii) Areas near dredging operations;

(iv) Areas where tidal flushing is known to be poor or times when a tidal stream is known to be turbid;

(v) In darkness, when bottom-dwelling organisms may rise up in the water column;

(vi) Where propellers may stir up the sediment; and

(vii) Areas with pods of whales, convergence zones, and boundaries of major currents.

Comment:
- Required to meet CWA Sec. 312 (p)(4)(B)(iii)(I) Minimum requirements. The added BMPs were included in the 2013 VGP and represent sensible and internationally accepted best management practices for ballast water.
- The anti-backsliding provisions in VIDA require that "[e]xcept as provided in subclause (II), the Administrator shall not revise a standard of performance under this subsection to be less stringent than an applicable existing requirement." CWA § 312 (p)(4)(D)(ii)(I).
- A further reason that the EPA gives for proposing not to continue the BMP for AIS is that "in cases of a known outbreak of harmful algal blooms or viral hemorrhagic septicemia, a state can submit a petition to EPA or the USCG requesting EPA to issue an emergency order as provided for in CWA Section 312 (p)(7)(A)(i)." p. 67835.
- However, the petition process highlighted by the EPA is not effective to answer an emergency situation because under CWA Section 312 (p)(7)(C)(i)(I) the petition process can take up to 180 days for approval once it has been submitted.
- The occurrence of an infestation or a toxic algal bloom requires immediate emergency measures or the uptake and transfer of ballast water can have a devastating effect on the receiving waters in the vessel's next port of arrival.

~~(2) Discharge of any sediment or water from ballast tank cleaning is prohibited.~~

Comment:
- Redundant to (c)(1) above

(6)~~(3)~~ Discharge or uptake of ballast water ~~must be avoided~~ is prohibited in areas with coral reefs that are not within a designated port, harbor, or offshore mooring station designated for the transfer of petroleum products or liquid natural gas to a land based facility. Ballast water discharge and uptake should be conducted ~~as far~~ outside 24 nautical miles from such coral reefs as ~~possible~~.

Comment:
- Required for consistency with other ANS ballast discharge protection provisions outside Contiguous Zone.
- Changed to "is prohibited" to prevent confusion about the ability of vessels to conduct ballast water operations above or in the vicinity of coral reef.
- All of the ports and harbors within the State of Hawai'i have abundant coral growth within them. Hawai'i also depends on the delivery of petroleum products to a single-point mooring (SPM) terminal anchored off Barbers Point in relatively close proximity to coral reef. The addition of the above suggested language will clarify that vessels can conduct necessary ballast water operations in designated harbors and petroleum moorings despite the presence of coral which will avoid confusion.

(7)~~(4)~~ A vessel-specific ballast water management plan must be developed and followed to ~~minimize the potential for the introduction and spread of ANS~~ meet the ballast water discharge standard and all other best management practices and requirements of this section. ~~A ballast water management plan is a holistic strategy that considers the operational profile of the vessel and the appropriate ballast water management practices and systems.~~ Vessel operators must document compliance with the plan in shipboard logs and plans and provide rationale if a discharge could not be minimized or eliminated per a best management practice.

Comment:
- Required to clarify that the management plan goes beyond ANS to include water quality standards such as for sediments and treatment residuals.
- Last sentence deleted as purview of USCG to consider these factors in applying minimum plan component standards.
- Adds compliance element consistent with definition of "minimize"

(d) *Ballast Water Discharge Standard.* Unless exempted in paragraph (d)(3) of this section, any ballast water discharge must meet the following numeric discharge standard:

(1) Biological parameters (expressed as instantaneous maximums).

(i) Organisms greater than or equal to 50 micrometers in minimum dimension: Less than 10 living organisms per cubic meter.

(ii) Organisms less than 50 micrometers and greater than or equal to 10 micrometers: Less than 10 living organisms per milliliter (mL).

(iii) Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): Less than 1 colony forming unit (cfu) per 100 mL.

(iv) *Escherichia coli:* A concentration of less than 250 cfu per 100 mL.

(v) Intestinal enterococci: A concentration of less than 100 cfu per 100 mL.

(2) Biocide parameters (expressed as instantaneous maximums).

(i) Chlorine dioxide: For any discharge from a BWMS using chlorine dioxide, chlorine dioxide must not exceed 200 µg/L.

(ii) Total residual oxidizers: For any discharge from a BWMS using chlorine or ozone, total residual oxidizers must not exceed 100 µg/L.

(iii) Peracetic acid: For any discharge from a BWMS using peracetic acid, peracetic acid must not exceed 500 µg/L.

(iv) Hydrogen peroxide: For any discharge from a BWMS using peracetic acid, hydrogen peroxide must not exceed 1,000 µg/L.

(3) Exemptions: The ballast water discharge standards in paragraphs (d)(1) and (2) of this section do not apply to any vessel that:

(i) Is less than or equal to 3,000 GT ITC (1,600 GRT if GT ITC is not assigned), and does not operate outside of the EEZ;

(ii) Is a non-seagoing, unmanned, unpowered barge, except any barge that is part of a dedicated vessel combination such as an integrated or articulated tug and barge unit;

(iii) Takes on and discharges ballast water exclusively in the contiguous portions of a single COTP Zone;

(iv) Does not travel more than 10 NM and passes through no locks;

(v) Is a vessel that operates exclusively in the Great Lakes and the St. Lawrence River west of a rhumb line drawn from Cap des Rosiers to Point-Sud-Oeste (West Point), Anticosti Island, and west of a line along 63 W. longitude from Anticosti Island to the north shore of the St. Lawrence River;

(vi) Is enrolled in the USCG Shipboard Technology Evaluation Program (STEP); or

(vii) Discharges ballast water prior to an applicable ballast water discharge standard compliance date established in regulations promulgated by the Secretary as described in 139.1(d).

(e) *Ballast Water Discharge Standard Monitoring*: The ballast water discharge standard under (d)(1) and (2) of this section shall be regularly monitored and equipment calibrated for compliance using the following standards-

(1) Ballast Water System Functionality Monitoring. [*Insert appropriate environmental discharge system functionality monitoring standards per VGP Part 2.2.3.5.1.1.2 including*

EPA will develop new functionality monitoring standards as appropriate and will publish them in the Federal Register.]

(2) Ballast Water monitoring equipment calibration. [*Insert appropriate environmental discharge equipment calibrating standards per VGP Part 2.2.3.5.1.1.3 including EPA will develop new calibration standards as appropriate and will publish them in the Federal Register.*]

(3) Effluent Biological Organism Monitoring. [*Insert appropriate environmental discharge monitoring standards per VGP Part 2.2.3.5.1.1.4 including EPA will develop new monitoring standards as appropriate and will publish them in the Federal Register.*]

(4) Requirements and Effluent Limitations for AMS and BWMS that use Active Substances (e.g., biocides). [*Insert appropriate requirements and effluent limitation standards per VGP Part 2.2.3.5.1.1.5 including EPA will develop new standards as appropriate and will publish them in the Federal Register.*]

(5) Ballast water treatment system recordkeeping and reporting. [*Insert appropriate recordkeeping and reporting standards per VGP Part 2.2.3.5.1.1.6 including EPA will develop new standards as appropriate and will publish them in the Federal Register.*]

Comment:
- Required to meet CWA 312(p)(4)(B)(iii)(I) to include all requirements in parts 2.1 and 2.2 relating to effluents "and all related requirements."
- These are standards of performance within the purview of EPA that are required to ensure AMS and BWMS are in compliance.
- Due to complexity of this VGP section and translation to rule language, only appropriate subparts citations are provided.
- Annual reporting to EPA is required to help in 5-year reviews and development of new standards of performance under CWA 312(4)(D)(i).

(~~e~~ f) *Ballast Water Exchange and Saltwater Flushing.* Except for any vessel identified in paragraph (e)(3), (f), or (g) of this section, prior to an applicable ballast water discharge standard compliance date established in regulations promulgated by the Secretary as described in § 139.1(d), or in situations where noncompliance with the discharge standard provided in (d) of this section is suspected or not possible including due to equipment malfunction or failure, any vessel must meet the requirements in paragraphs (e)(1) and (2) of this section.

Comment:
- Required to clarify that compliance date is not an absolute standard and a vessel must apply exchange or flushing standards whenever the discharge non-compliance is known or suspected.

(1) Any vessel that carries ballast water taken on in areas less than 200 NM from any shore that will subsequently operate outside the EEZ and more than 200 NM from any shore must:

(i) Conduct ballast water exchange in waters not less than 200 NM from any shore prior to discharging that ballast water; and

(ii) Commence ballast water exchange not less than 200 NM from any shore and as early in the vessel voyage as practicable.

(2) For any ballast tank that is empty or contains unpumpable residual water on a vessel bound for a port or place of destination subject to the jurisdiction of the United States, the master must, prior to arriving at that port or place of destination, either:

(i) Seal the tank so that there is no discharge or uptake and subsequent discharge of ballast water, or

(ii) Conduct a ballast water exchange or saltwater flush:

Comment:
- Required for consistency with CWA Sec. 312 (p)(6)(B)(i).

(A) Not less than 200 NM from any shore for a voyage originating outside the United States or Canadian EEZ; or

(B) not less than 50 NM from any shore for a voyage originating within the United States or Canadian EEZ.

(3) Exceptions: Paragraph~~s~~ (e)~~(1) and~~ (2), do not apply under any of the following circumstances:

Comment:
- Required as these exceptions only apply to empty ballast tanks.

(i) If the unpumpable residual waters and sediments of an empty ballast tank were subject to treatment, in compliance with applicable requirements, through a BWMS approved or accepted by the Secretary;

(ii) Except as otherwise required under this part, if the unpumpable residual waters and sediments of an empty ballast tank were sourced solely within:

(A) The same port or place of destination; or

(B) Contiguous portions of a single COTP Zone;

(iii) If complying with an applicable requirement of this paragraph (e):

(A) Would compromise the safety of the vessel; or

(B) Is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety;

(iv) If design limitations of an existing vessel prevent a ballast water exchange or saltwater flush from being conducted in accordance with this paragraph (e); or

(v) If the vessel is operating exclusively within the internal waters of the United States and Canada.

(f) *Vessels entering the Great Lakes.* (1) Ballast Water Exchange—Except as provided in paragraph (f)(2) of this section, any vessel entering the St. Lawrence Seaway through the mouth of the St. Lawrence River must conduct a complete ballast water exchange or saltwater flush:

(i) Not less than 200 NM from any shore for a voyage originating outside the EEZ; or

(ii) Not less than 50 NM from any shore for a voyage originating within the EEZ.

(2) Exceptions: The requirements of paragraph (f)(1) of this section do not apply to any vessel if:

(i) Complying with paragraph (f)(1) of this section:

(A) Would compromise the safety of the vessel; or

(B) Is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety.

(ii) Design limitations of an existing vessel prevent a ballast water exchange from being conducted in accordance with an applicable requirement of paragraph (f)(1) of this section.

(iii) The vessel has no residual ballast water or sediments onboard.

(iv) The vessel retains all ballast water while in waters subject to the requirement.

(v) The empty ballast tanks on the vessel are sealed in a manner that ensures that no discharge or uptake occurs, and any subsequent discharge of ballast water is subject to the requirement.

(g) *Pacific waters.*

(1) Ballast Water Exchange:

(i) Except as provided in paragraphs (g)(1)(ii) and (g)(3) of this section, any vessel that operates either between two ports or places of destination within the Pacific Region; or a port or place of destination within the Pacific Region and a port or place of destination on the Pacific Coast of Canada or Mexico north of parallel 20 degrees north latitude, inclusive of the Gulf of California, must conduct a complete ballast water exchange in waters more than 50 NM from shore.

(ii) Exemptions: The requirements of paragraph (g)(1)(i) of this section do not apply to any vessel:

(A) Using, in compliance with applicable requirements, a type-approved BWMS approved or accepted by the Secretary.

(B) Voyaging:

(*1*) Between or to a port or place of destination in the State of Washington, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 46 degrees north latitude, including the internal waters of the

Columbia River, and the internal waters of Canada south of parallel 50 degrees north latitude, including the waters of the Strait of Georgia and the Strait of Juan de Fuca;

(*2*) Between ports or places of destination in the State of Oregon, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude;

(*3*) Between ports or places of destination in the State of California within the San Francisco Bay area east of the Golden Gate Bridge, including the Port of Stockton and the Port of Sacramento, if the ballast water to be discharged from the commercial vessel originated solely from ports or places within that area;

(*4*) Between the Port of Los Angeles, the Port of Long Beach, and the El Segundo offshore marine oil terminal, if the ballast water to be discharged from the commercial vessel originated solely from the Port of Los Angeles, the Port of Long Beach, or the El Segundo offshore marine oil terminal;

(*5*) Between a port or place of destination in the State of Alaska within a single COTP Zone;

(*6*) Between ports or places of destination in different counties of the State of Hawaii, if the vessel conducts a complete ballast water exchange in waters that are more than 10 NM from shore and at least 200 meters deep; or

(*7*) Between ports or places of destination within the same county of the State of Hawaii~~, if the vessel does not transit outside state marine waters during the voyage~~.

Comment:

- Required to correct a technical error in the VIDA statute that will require vessels traveling from one island to another in the same county that briefly transit outside State waters to travel 50 NM to conduct a complete BW exchange. We realize that omitting this language from the regulations will not remove the legislative requirement for intra-county voyages. However, omitting it from the regulation will avoid having to seek a correction to the regulations once the technical correction is enacted as an amendment to CWA section 312(p)(10)(C)(ii)(II)(bb)(GG).

(2) Low-Salinity Ballast Water:

(i) Except as provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a complete ballast water exchange must be conducted for any commercial vessel that transports ballast water sourced from waters with a measured salinity of less than 18 parts per thousand and voyages to a Pacific Region port or place of destination with a measured salinity of less than 18 parts per thousand:

(A) Not less than 50 NM from shore, if the ballast water was sourced from a Pacific Region port or place of destination.

(B) More than 200 NM from shore, if the ballast water was not sourced from a Pacific Region port or place of destination.

(ii) Exception: The requirements of paragraph (g)(2)(i) of this section do not apply to any vessel voyaging to a port or place of destination in the Pacific Region that is using, in

compliance with applicable requirements, a type-approved BWMS accepted by the Secretary, or a type-approved BWMS approved by the secretary to achieve the following numeric discharge standard for biological parameters (expressed as instantaneous maximums):

(A) Organisms greater than or equal to 50 micrometers in minimum dimension: Less than 1 living organism per 10 cubic meters.

(B) Organisms less than 50 micrometers and greater than or equal to 10 micrometers: Less than 1 living organisms per ~~100~~ 10 milliliters (mL).

Comment:

- Required for consistency with CWA sec 312(p)(10)(C)(iii)(II)(bb) "less than 1 organism per 10 milliliters…"

(C) Toxicogenic *Vibrio cholerae* (serotypes O1 and O139): Less than 1 colony forming unit (cfu) per 100 mL or less than 1 cfu per gram of wet weight of zoological samples.

(D) *Escherichia coli:* Less than 126 cfu per 100 mL.

(E) Intestinal enterococci: Less than 33 cfu per 100 mL.

(3) General Exceptions: The requirements of paragraphs (g)(1) and (2) of this section do not apply to a commercial vessel if:

(i) Complying with the requirement would compromise the safety of the commercial vessel.

(ii) If design limitations of an existing vessel, prevent a ballast water exchange from being conducted in accordance with paragraphs (g)(1) and (2) of this section, as applicable.

(iii) The commercial vessel:

(A) Has no residual ballast water or sediments onboard; or

(B) Retains all ballast water while in waters subject to those requirements.

(iv) Empty ballast tanks on the commercial vessel are sealed in a manner that ensures that:

(A) No discharge or uptake occurs; and

(B) Any subsequent discharge of ballast water is subject to those requirements.

(i) *Federally-protected waters.* Additional standards applicable to discharges from ballast tanks when a vessel is operating in federally-protected waters are contained in § 139.40(b).

§ 139.11 Bilges.

(a) The requirements in paragraphs (b) through (d) of this section apply to discharges from the bilge consisting of water and residue that accumulates in a lower compartment of the vessel's hull below the waterline. This includes any water and residue from a cargo area

that comes into contact with oily materials or a below-deck parking area or other storage area for motor vehicles or other motorized equipment.

(b) The discharge of bilgewater from any vessel must not contain any flocculants or other additives except when used with an oily water separator or to maintain or clean equipment. The use of any additives to remove the appearance of a visible sheen is prohibited.

(c) For any vessel of 400 GT ITC (400 GRT if GT ITC is not assigned) and above, the discharge of bilgewater must occur when the vessel is underway.

(d) Additional standards applicable to discharges from bilges when a vessel is operating in federally-protected waters are contained in § 139.40(c).

(e) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a bilge discharge could not be minimized or eliminated.

Comment:

- Required here and all subsequent incidental discharge sections for consistency with CWA sec 312(p)(10)(C)(iii)(II)(bb) "less than 1 organism per 10 milliliters…"

§ 139.12 Boilers.

(a) The requirements in paragraphs (b) and (c) of this section apply to discharges resulting from boiler blowdown.

(b) The discharge from boiler blowdown must be minimized when in port.

(c) Additional standards applicable to discharges from boilers when a vessel is operating in federally-protected waters are contained in § 139.40(d).

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a boiler discharge could not be minimized or eliminated.

§ 139.13 Cathodic protection.

(a) The requirements in paragraph (b) of this section apply to discharges resulting from a vessel's cathodic corrosion control protection device, including sacrificial anodes and impressed current cathodic protection systems.

(b) Spaces between any flush-fit anode and backing must be filled to remove potential hotspots for biofouling organisms.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a cathodic protection discharge could not be minimized or eliminated.

§ 139.14 Chain lockers.

(a) The requirements in paragraphs (b) through (e) of this section apply to accumulated biological organisms, sediments, precipitation and seawater that is emptied from the compartment used to store the anchor chain on a vessel and to prevent the discharge of accumulated biological organisms, sediments, precipitation and seawater when deploying the anchor in a new port or place of destination.

Comment:
- Required for section continuity and to clarify intent.

(b) Anchors and anchor chains must be rinsed of biofouling organisms and sediment when the anchor is retrieved.

(c) The discharge of accumulated biological organisms, sediments, precipitation and seawater ~~water and sediment~~ from any chain locker is prohibited in port and must be discharged beyond the contiguous zone or into a reception facility.

~~(d) For all vessels that operate beyond the waters of the contiguous zone, anchors and anchor chains must be rinsed of biofouling organisms and sediment prior to entering the waters of the contiguous zone.~~

Comment:
- (c) Required for section continuity with 139.2 and to clarify where discharges may occur in keeping definition of protection of ANS within waters of the contiguous zone.
- (d) is duplication of (c)

(e) Additional standards applicable to a discharge from chain lockers when a vessel is operating in federally-protected waters are contained in § 139.40(e).

(f) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a chain locker discharge could not be minimized or eliminated.

§ 139.15 Decks.

(a) Section 139.4(6) and (10), and t~~T~~he requirements in paragraphs (b) through (i) of this section apply to the overboard discharge of washdown and runoff, including but not limited to precipitation and sea water, from decks, well decks, and bulkhead areas.

Comment:
- Required to provide full spectrum of requirements.

(b) Coamings or drip pans must be used for machinery that is expected to leak or otherwise release oil on the deck; accumulated oil must be collected.

(c) Where required by an applicable international treaty or convention or the Secretary, the vessel must be fitted with and use physical barriers (*e.g.,* spill rails, scuppers and scupper plugs) to ~~collect runoff for treatment~~ meet broom clean conditions during any washdown.

Comment:
- Required to include full spectrum of requirements and consistency with application of "broom clean" condition

(d) ~~Control measures must be used to minimize the introduction of on-deck debris, garbage, residue, and spill into deck washdown and runoff.~~

Comment:
- Redundant with revised definition of "broom clean" and (e).

(e) Vessel decks must be kept in broom clean condition whenever the vessel is underway and prior to any deck washdown.

(f) Deck washdowns must be minimized in port.

(g) The discharge of floating solids, visible foam, halogenated phenolic compounds, dispersants, surfactants, and spills must be minimized in any deck washdown.

(h) Any soap, cleaner, or detergent used for deck washdown must be minimally-toxic, phosphate-free, and biodegradable.

(i) Additional standards applicable to discharges from decks when a vessel is operating in federally-protected waters are contained in § 139.40(f).

(j) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a deck discharge could not be minimized or eliminated.

§ 139.16 Desalination and purification systems.

(a) The requirements in paragraph (b) of this section apply to discharges from onboard desalination and purification systems used to generate freshwater from seawater or otherwise purify water.

(b) The discharge resulting from the cleaning of desalination and purification systems with toxic or hazardous materials is prohibited.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a desalination and purification system discharge could not be minimized or eliminated.

§ 139.17 Elevator pits.

(a) The requirements in paragraph (b) of this section apply to the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels.

(b) The discharge of untreated accumulated water and sediment from any elevator pit is prohibited.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if an elevator pit discharge could not be minimized or eliminated.

§ 139.18 Exhaust gas emission control systems.

Comment:
- In general, the complexity of the exhaust gas emission control system section, significant problems it presents, and limited state review period precludes the ability to fully recommend specific redline changes. Therefore, we offer mostly narrative comments on areas that need to be addressed to protect state waters. We ask that EPA consult with states in finding the best solutions.

(a) *Applicability.* The requirements in paragraphs (b) through (e) of this section apply to discharges from the operation and cleaning of any exhaust gas cleaning system (EGCS) and exhaust gas recirculation (EGR) system.

(b) *Discharge requirements.* Unless excluded in paragraph (c) of this section, any discharge identified in paragraph (a) of this section must meet the following discharge requirements.

Comment:
- The standards rely on IMO instead of technology assessment or analysis of EPA data received from the VGP in comparison to state Water Quality Standards criteria.
- Limits and standards should be set for the following pollutants that have shown elevated results in vessel submitted data to EPA at the most stringent levels for WQ standards. Additional parameters to include a standard:
  - Metals:
    - arsenic
    - cadmium
    - copper
    - lead
    - mercury
    - nickel
    - silver
    - zinc
  - Individual PAH's parameters:
    - Benzo(a)anthracene
    - Benzo(a)pyrene
    - Benzo(b)fluroanthrene
    - Chrysene
    - Dibenzo(a,h,)anthracene
    - Indeno(1,2,3-cd)pyrene
  - Aesthetics

(1) *pH.* (i) The discharge must meet one of the following requirements:

(A) The discharge must have a pH of no less than 6.5 as measured at the vessel's overboard discharge point with the exception that during maneuvering and transit, the maximum difference of two pH units is allowed between inlet water and overboard discharge values; or

Comment:
- A pH of 6.5 is not protective enough for marine WQ standards.

~~(B) The pH discharge limit is the value that will achieve a minimum pH of 6.5 at 4 meters from the overboard discharge point with the ship stationary. This overboard pH discharge limit is to be determined at the overboard discharge monitoring point and is to be recorded as the vessel's discharge limit. The overboard pH can be determined either by means of direct measurement, or by using a calculation-based methodology (computational fluid dynamics or other equally scientifically established empirical formulas).~~

Comment:

- Required as violates §139.4(4) "Dilution of any discharge for the purpose of meeting any standard in this part is prohibited."
- There should not be a 4-meter dilution factor when the vessel EGCS system is already relying on dilution via utilizing intake of sea water to wash exhaust and then a buffer dilution prior to discharge. This is only swapping an air pollutant for a WQ pollutant. The high volume EGCS discharges add to the already known ocean acidification problem.
- Who determines the calculation-based methodology? This could change based on the vessel operator and should not be used. A measurement is a more scientific and accurate way to determine pH.

(ii) The pH numeric discharge standard may be exceeded for up to 15 minutes in any 12-hour period.

(2) *PAHs (Polycyclic Aromatic Hydrocarbons).*

(i) The maximum continuous PAH concentration in the discharge must be no greater than 50 µg/L PAHphe (phenanthrene equivalence) above the inlet water PAH concentration. The PAH concentration in the discharge must be measured downstream of the water treatment equipment and upstream of any dilution (or other reactant dosing unit, if used).

(ii) The 50 µg/L numeric discharge standard is normalized for a discharge flow rate of 45 tons(t)/MWh where the MW refers to the Maximum Continuous Rating or 80% of the power rating of the fuel oil combustion unit. This numeric discharge standard is adjusted upward or downward for varying discharge flow rates, pursuant to Table 1 to paragraph (b)(2)(ii) of this section.

Table 1 to Paragraph (b)(2)(ii)

Flow rate (t/MWh)	Numeric discharge standard (µg/L PAHphe equivalents)	Measurement technology
0-1	2,250	Ultraviolet light.
2.5	900	Ultraviolet light.
5	450	Fluorescence [a].
11.25	200	Fluorescence.
22.5	100	Fluorescence.
45	50	Fluorescence.
90	25	Fluorescence.

Table 1 to Paragraph (b)(2)(ii)

Flow rate (t/MWh)	Numeric discharge standard (µg/L PAHphe equivalents)	Measurement technology

[a] For any Flow Rate greater than 2.5 t/MWh, Fluorescence technology must be used.

(iii) The continuous PAHphe numeric discharge standard may be exceeded by 100% for up to 15 minutes in any 12-hour period.

(3) *Turbidity/suspended particulate matter.*

(i) The washwater treatment system must be designed to minimize suspended particulate matter, including heavy metals and ash.

Comment:
- This is not a scientific statement and is not enforceable. Define "designed to minimize."

(ii) The maximum continuous turbidity in the discharge must be no greater than 25 FNU (formazin nephlometric units) or 25 NTU (nephlometric turbidity units) or equivalent units above the inlet water turbidity. However, to account for periods of high inlet turbidity, readings must be a rolling average over a 15-minute period to a maximum of 25 FNU with the discharge measured downstream of the water treatment equipment and upstream of dilution (or reactant dosing, if used).

(iii) The continuous turbidity numeric discharge standard may be exceeded by 20% for up to 15 minutes in any 12-hour period.

(4) *Nitrates:*

(i) The washwater treatment system must prevent the discharge of nitrates beyond that associated with a 12% removal of NO_X from the exhaust, or beyond 60 mg/L normalized for a discharge rate of 45 tons/MWh, whichever is greater.

Comment:
- Why is the table from the VGP not included here? Would be much clearer to vessel operators to have the table.

(c) *Applicability.* The discharges of EGR bleed-off water from vessels that are underway and operating on fuel that meets the emissions requirements for sulfur starting in 2020 as specified in MARPOL Annex VI are excluded from paragraph (b) of this section.

(d) *Prohibition.* The discharge of EGR bleed-off water retained onboard in a holding tank that does not meet the discharge requirements in paragraph (b) of this section, is prohibited.

Comment:
- What if the bleed-off water doesn't go to a holding tank, but is instead discharged directly? That too should have to meet section (b)

(e) Vessel operators must document compliance in shipboard logs and plans and provide rationale if an exhaust gas emission control systems discharge could not be minimized or eliminated.

§ 139.19 Fire protection equipment.

(a) The requirements in paragraphs (b) through (d) of this section apply to the discharge from fire protection equipment. As specified in § 139.1(b)(3), these requirements do not apply to discharges from fire protection equipment when used for emergencies or when compliance with such requirements would compromise the safety of the vessel or life at sea.

(b) The discharge from fire protection equipment during testing, training, maintenance, inspection, or certification, excluding USCG-required inspection and certification, is prohibited in port and must not contain any fluorinated firefighting foam.

(c) Additional requirements applicable to discharges from fire protection equipment when a vessel is operating in federally-protected waters are contained in § 139.40(g).

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a fire protection equipment discharge could not be minimized or eliminated.

§ 139.20 Gas turbines.

(a) The requirements in paragraph (b) of this section apply to discharges from the washing of gas turbine components.

(b) The discharge of untreated gas turbine washwater is prohibited unless infeasible.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a gas turbine discharge could not be minimized or eliminated.

§ 139.21 Graywater systems.

Comment:

- In general, the complexity of the Graywater systems section, significant problems it presents, and limited state review period precludes the ability to fully recommend specific redline changes. Therefore, we offer mostly narrative comments on areas that need to be addressed to protect state waters. We ask that EPA consult with states in finding the best solutions.

(a) The requirements in paragraphs (b) through (h) of this section apply to discharges of graywater except for graywater from any commercial vessel on the Great Lakes that is subject to the requirements in 40 CFR part 140 and 33 CFR part 159.

(b) The introduction of kitchen waste, food, oils, and oily residues to the graywater system must be minimized.

(c) Any soaps, cleaners, and detergents discharged in graywater must be minimally-toxic, phosphate-free, and biodegradable.

(d) The discharge of graywater is prohibited from any vessel:

(1) Within 3 NM from shore that voyages at least 3 NM from shore and has remaining available graywater storage capacity, unless the discharge meets the standards in paragraph (f) of this section; and

(2) Within 1 NM from shore that voyages at least 1 NM from shore but not beyond 3 NM from shore and has remaining available graywater storage capacity, unless the discharge meets the standards in paragraph (f) of this section.

Comment:

- What if the vessel is within 1nm and doesn't go beyond 3 NM or 1 NM? You then have near shore discharges not required to meet (f), likely from a vessel not moving or moving 3 NM or 1 NM.
- What is the definition of capacity? Many ships can divert graywater/blackwater/EGCS water to ballast tanks but unless capacity is defined there is no capability to enforce upon not using all tanks available for storage capacity. This needs to be required to maximize capacity.

(e) The discharge of graywater from the following vessels must meet the numeric discharge standard established in paragraph (f) of this section:

(1) Any new vessel of 400 GT ITC (400 GRT if GT ITC is not assigned) and above;

(2) Any passenger vessel with overnight accommodations for 500 or more passengers;

(3) Any passenger vessel with overnight accommodations for 100-499 passengers unless the vessel was constructed before December 19, 2008, and does not voyage beyond 1 NM from shore; and

Comment:

- This should clarify that for these vessels, despite the holding capacity, (f) is required. Section (f) should apply to all vessels, no matter the size. Holding capacity is the limiting factor.

(4) Any new ferry authorized by the USCG to carry 250 or more people.

(f) A vessel identified in paragraph (e) of this section that is discharging graywater must meet the following numeric discharge standard:

(1) *Fecal coliform.*

(i) The 30-day geometric mean must not exceed 20 cfu/100 mL (colony forming units/milliliter).

(ii) Greater than 90% of samples must not exceed 40 cfu/100 mL.

(2) *BOD5.*

(i) The 30-day average must not exceed 30 mg/L.

(ii) The 7-day average must not exceed 45 mg/L.

(3) *Suspended solids.*

(i) The 30-day average must not exceed 30 mg/L.

(ii) The 7-day average must not exceed 45 mg/L.

(4) *pH.*

(i) Must be maintained between 6.0 and 9.0.

(ii) [Reserved]

(5) Total residual chlorine.

(i) Must not exceed 10.0 µg/L.

(ii) [Reserved]

Comment:
- All of (f) – Significantly substandard to existing state and regional WQ standards. EPA needs to conduct comprehensive review of states for their WQ standards to determine what these numbers should be during discharges within 3NM or 1NM depending on definitions above.

(g) The discharge of graywater from any vessel operating on the Great Lakes that is not a commercial vessel must not exceed 200 fecal coliform forming units per 100 milliliters and contain no more than 150 milligrams per liter of suspended solids.

(h) Additional standards applicable to discharges from graywater systems when a vessel is operating in federally-protected waters are contained in § 139.40(h).

(i) Vessel operators must document compliance in shipboard logs and plans and provide rationale if graywater systems discharge could not be minimized or eliminated.

§ 139.22 Hulls and associated niche areas.

(a) *Applicability.* The requirements in paragraphs (b) and (c) of this section apply to the discharge of coatings, biofouling organisms, and other materials from vessel hull surfaces and niche areas as an incidental discharge from in-water cleaning.

Comment:
- Required to focus only on incidental discharges under purview of EPA.

(b) *Coatings.* (1) Coatings applied to the vessel must be specific to the operational profile of the vessel and the equipment to which it is applied, including, for biocidal coatings, having appropriate effective biocide release rates and components that are biodegradable once separated from the vessel surface.

(2) Coatings must be applied, maintained, and reapplied consistent with manufacturer specifications, including the thickness, the method of application, and the lifespan of the coating.

(3) Coatings on vessel hulls and niches must not contain tributyltin (TBT) or any other organotin compound used as a biocide.

(i) Any vessel hull previously covered with a coating containing TBT (whether or not used as a biocide) or any other organotin compound (if used as a biocide) must:

(A) Maintain an effective overcoat on the vessel hull so that no TBT or other organotin leaches from the vessel hull; or

(B) Remove any TBT or other organotin compound from the vessel hull.

(4) When an organotin compound other than TBT is used as a catalyst in the coating (*e.g.,* dibutyltin), the coating must:

(i) Contain less than 2,500 mg total tin per kilogram of dry paint; and

(ii) Not be designed to slough or otherwise peel from the vessel hull, noting that incidental amounts of coating discharged by abrasion during cleaning or after contact with other hard surfaces (*e.g.,* moorings) are acceptable.

(5) Coatings that contain cybutryne must not be applied on vessel hulls and niches.

(i) Any vessel that has previously applied a coating that contains cybutryne to the vessel hull must:

(A) Apply and maintain an effective overcoat of the vessel hull so that no cybutryne leaches from the vessel hull, noting that incidental amounts of coating discharged by abrasion during cleaning or after contact with other hard surfaces (*e.g.,* moorings) are acceptable; or

(B) Remove any cybutryne coating from the vessel hull.

(6) Alternatives to copper-based coatings must be considered for vessels spending 30 or more days per year in a copper-impaired waterbody or using these waters as their home port.

(c) *In-Water Cleaning.*

(1) Hulls and niche areas must be ~~cleaned regularly~~ managed to minimize ~~biofouling~~ macrofouling.

(2) In-water cleaning of hull and associated niche areas is allowed where-

(i) Biofouling does not exceed microfouling levels; and

(ii) Anti-fouling coatings are biocide-free and non-ablative.

~~(2) Cleaning techniques must minimize damage to the coating.~~

~~(3) Cleaning must not result in a plume or cloud of paint.~~

~~(4)~~ (3) In-water cleaning of ~~biofouling that exceeds a fouling rating of FR-20~~ hull and associated niche areas that have macrofouling or use biocide or ablative coatings is prohibited unless an in-water cleaning and capture system is used as provided in paragraph (d) of this section. ~~unless one or more of the following conditions are met:~~

~~(i) The biofouling is local in origin and cleaning does not result in a plume or cloud of paint; or~~

~~(ii) An in-water cleaning and capture (IWCC) system is designed and operated to:~~

~~(A) Capture coatings and biofouling organisms;~~

~~(B) Filter biofouling organisms from the effluent; and~~

~~(C) Minimize the release of biocides.~~

~~(5) The discharge of any wastes filtered or otherwise removed from any IWCC system is prohibited.~~

~~(6) In-water cleaning of any copper-based hull coatings is prohibited in a copper-impaired waterbody within the first 365 days after application.~~

~~(7) In-water cleaning must not be conducted on any section of a biocidal antifouling coating that shows excessive cleaning actions (*e.g.*, brush marks) or blistering due to the internal failure of the paint system.~~

Comment:
- Required to prevent significant discharges of macrofouling and toxic pollutants.
- The Fouling Rating is not needed as only differentiates between microfouling and macrofouling.
- Required to separate out exclusions – IWCC moved to new (d)
- Deleted (6) and (7) as no longer pertinent to in-water cleaning.

(~~8~~4) Any soap, cleaner, or detergent used on vessel surfaces, such as a scum line of the hull, must be minimally-toxic, phosphate-free, and biodegradable.

(~~9~~5) Additional standards applicable to discharges from hulls and associated niche areas when a vessel is operating in federally-protected waters are contained in § 139.40(i).

(6) Vessel hull cleanings must adhere to any applicable cleaning requirements found on the coatings' manufacturers guidelines and any applicable FIFRA label.

Comment:
- Required as there are many different types of vessel hull coatings currently being employed by the commercial vessel industry which makes developing regulations for the myriad systems infeasible. However, most if not all systems come with specific guidelines from the manufacturer and a label required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).
- The addition of this language will ensure that BMPs for the safe and effective cleaning for each type of hull coating will be followed which will extend the life of the hull coating and better protect receiving waters from the introduction of ANS.
- The proposed language was developed from regulations covering in-water cleaning included in the Final Rule for the Uniform National Discharge Standards for Vessels of the Armed Forces— Phase II Batch Two codified at 40 C.F.R. Part 1700.37.

(d) *In-Water Cleaning and Capture (IWCC).*

(1) When discharging IWCC effluent to a reception facility in the United States, discharge only to reception facilities that have an NPDES permit to discharge hull and associated niche area effluents.

(2) The requirements of § 139.22 do not apply to the following vessels:

(i) A vessel that uses an in-water cleaning and capture (IWCC) system that discharges coatings, biofouling organisms, and other materials from vessel hulls and associated niche areas to a reception facility; and

(ii) All coatings, biofouling organisms, and other materials from vessel hulls and associated surfaces and niche areas not captured using an IWCC system meets cleaning requirements consistent with paragraph (c)(2) of this section.

Comment:
- Required as IWCC systems are defined as reception facilities and not covered under VIDA.
- (d) and (d)(1) language follows ballast water reception facility language under 139.10(b) and (b)(5). Assumption that "Exclusions" takes it out of VIDA.
- Since IWCC is not a clean transfer, need to link to general IWC requirements
- Delete (3) as not a factor for IWCC, See (c)
- New (3) required for consistency with 33 CFR 151.2050(i)

(e) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a hull or associated niche area discharge could not be minimized or eliminated.

§ 139.23 Inert gas systems.

(a) The requirements in paragraph (b) of this section apply to the discharge of washwater from an inert gas system and deck seal water when used as an integral part of that system.

(b) The discharge from inert gas systems must meet the general discharge requirements in subpart B of this part.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if an inert gas systems discharge could not be minimized or eliminated.

§ 139.24 Motor gasoline and compensating systems.

(a) The requirements in paragraphs (b) and (c) of this section apply to the discharge of motor gasoline and compensating ambient water added to keep gasoline tanks full to prevent potentially explosive gasoline vapors from forming.

(b) The discharge of motor gasoline and compensating discharges must meet all general discharge requirements in subpart B of this part.

(c) Additional standards applicable to discharges from motor gasoline and compensating systems when a vessel is operating in federally-protected waters are contained in § 139.40(j).

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a motor gasoline or compensating systems discharge could not be minimized or eliminated.

§ 139.25 Non-oily machinery.

(a) The requirements in paragraph (b) of this section apply to discharges from machinery that contains no oil, including discharges from the operation of desalination systems, water chillers, valve packings, water piping, low- and high-pressure air compressors, propulsion engine jacket coolers, fire pumps, and seawater and potable water pumps.

(b) The discharge of untreated non-oily machinery wastewater and packing gland or stuffing box effluent containing toxic or bioaccumulative additives or the discharge of oil in such quantities as may be harmful is prohibited.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a non-oily machinery discharge could not be minimized or eliminated.

§ 139.26 Pools and spas.

(a) The requirements in paragraphs (b) and (c) of this section apply to discharges from pools and spas.

(b) Except for unintentional or inadvertent releases from overflows across the decks and into overboard drains caused by, but not limited to, weather, vessel traffic, marine wildlife avoidance or navigational maneuvering, discharge of pool and spa water must:

(1) Occur only while the vessel is underway, unless determined to be infeasible, and;

(2) Meet the following numeric discharge standard:

(i) For chlorine disinfection: Total residual chlorine less than 100 µg/L; and

(ii) For bromine disinfection: Total residual oxidant less than 25 µg/L.

(c) Additional standards applicable to discharges from pools and spas when a vessel is operating in federally-protected waters are contained in § 139.40(k).

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a pool or spa discharge could not be minimized or eliminated.

§ 139.27 Refrigeration and air conditioning.

(a) The requirements in paragraph (b) of this section apply to discharges of condensation from refrigeration, air conditioning, and similar chilling equipment.

(b) The direct overboard discharge of any condensate that contacts toxic or hazardous materials is prohibited.

(c) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a refrigeration or air conditioning discharge could not be minimized or eliminated.

§ 139.28 Seawater piping.

(a) The requirements in paragraphs (b) and (c) of this section apply to discharges from seawater piping systems that provide water for other vessel uses (*e.g.,* engines, hydraulic systems, and refrigeration), including while a vessel is in port or in layup.

(b) Seawater piping systems, including sea chests, grates, and similar appurtenances, that accumulate ~~biofouling that exceeds a fouling rating of FR-20~~ macrofouling must be fitted with a Marine Growth Prevention System (MGPS).

Comment:
- Required for consistency with no longer using FR system.

(1) An MGPS must be selected to address:

(i) The level, frequency, and type of biofouling; and

(ii) The design, location, and area in which the system will be used.

(2) An MGPS must include one, or some combination of the following:

(i) Chemical injection;

(ii) Electrolysis, ultrasound, ultraviolet radiation, or electrochlorination;

(iii) Application of an antifouling coating; or

(iv) Use of cupro-nickel piping.

(3) Upon identification of ~~biofouling that exceeds a fouling rating of FR-20~~ macrofouling in a seawater piping system, reactive measures to manage the macrofouling must be used. Discharges resulting from reactive measures to remove macrofouling are prohibited in port unless an in-water cleaning and capture system as provided in § 139.22(d) is used.

Comment:
- Required for consistency with no longer using FR system.
- Required for consistency with 139.22.

(c) Additional standards applicable to discharges from seawater piping when a vessel is operating in federally-protected waters are contained in § 139.40(l).

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a seawater piping systems discharge could not be minimized or eliminated.

§ 139.29 Sonar domes.

(a) The requirements in paragraphs (b) and (c) of this section apply to discharges from sonar domes.

(b) The discharge of water during maintenance or repair from inside the sonar dome is prohibited.

(c) Use of bioaccumulative biocides on the exterior of any sonar dome is prohibited when non-bioaccumulative alternatives are available.

(d) Vessel operators must document compliance in shipboard logs and plans and provide rationale if a sonar dome discharge could not be minimized or eliminated.

Subpart D—Special Area Requirements

§ 139.40 Federally-protected waters.

(a) *Applicability.* The requirements in paragraphs (b) through (l) of this section are in addition to applicable standards in subparts B and C of this part and apply when a vessel is operating in federally-protected waters.

(b) *Ballast tanks.* The discharge or uptake of ballast water within, or in waters that may directly affect federally-protected waters ~~must be avoided~~ is prohibited, except for those vessels operating within the boundaries of any national marine sanctuary that preserves shipwrecks or maritime heritage in the Great Lakes, unless the designation documents for such sanctuary do not allow taking up or discharging ballast water in such sanctuary, pursuant to section 610 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014 (Pub. L. 113-281; 16 U.S.C. 1431 note), as amended by the Coast Guard ~~Reauthorization~~ Authorization Act of 2015, title VI, sec 602. Public Law 114-120, title VI, sec 602.

Comment:

- The proposed language change is intended to provide an enforceable standard for the discharge or uptake of BW in federally-protected waters and waters that may directly affect federally-protected waters. While the standard to "avoid" such discharge or uptake is taken from the Final 2013 VGP, in practice it will be difficult or impossible to enforce.
- The proposed prohibition is not an absolute prohibition as it is subject to the safety exception in §139.1(b)(3).
- The addition of the language "or in waters that may directly affect" federally-protected waters is consistent with the Final 2013 VGP, provides needed protection for natural and cultural resources, and ensures the regulation is at least stringent as the current 2013 VGP requirements.
- The remaining proposed changes are to correct the citation

(c) *Bilges.* For any vessel of 400 GT ITC (400 GRT if GT ITC is not assigned) and above, the discharge of bilgewater into federally-protected waters is prohibited.

(d) *Boilers.* The discharge of boiler blowdown into federally-protected waters is prohibited.

(e) *Chain lockers.* The discharge of accumulated water and sediment from any chain locker into federally-protected waters is prohibited.

(f) *Decks.* The discharge of deck washdown into federally-protected waters is prohibited.

(g) *Fire protection equipment.* The discharge from fire protection equipment during testing, training, maintenance, inspection, or certification into federally-protected water is prohibited. The discharge of non-fluorinated firefighting foam into federally-protected

waters is prohibited except by any vessel owned or under contract with the United States, state, or local government to do business exclusively in any federally-protected waters.

(h) *Graywater system.* The discharge of graywater into federally-protected waters from any vessel with remaining available graywater storage capacity is prohibited.

(i) *Hulls and associated niche areas.* The discharge from in-water cleaning of vessel hulls and niche areas into federally-protected waters is prohibited.

(j) *Motor gasoline and compensating systems.* The discharge of motor gasoline and compensating discharges into federally-protected waters is prohibited.

(k) *Pools and spas.* The discharge of pool or spa water into federally-protected waters is prohibited.

(l) *Seawater piping systems.* The discharge of chemical dosing, as described in § 139.28, into federally-protected waters is prohibited.

(e) Vessel operators must document compliance in shipboard logs and plans and provide rationale if any discharges in this section could not be minimized or eliminated.

Subpart E—Procedures for States To Request Changes to Standards, Regulations, or Policy Promulgated by the Administrator

§ 139.50 Petition by a Governor for the Administrator to establish an emergency order or review a standard, regulation, or policy.

(a) The Governor of a State (or a designee) may submit a petition to the Administrator:

(1) To issue an emergency order under CWA section 312(p)(4)(~~e~~E); or

Comment:
- Required to correct reference

(2) To review any standard of performance, regulation, or policy promulgated by the Administrator under CWA section 312(p)(4) or (6), if there exists new information that could reasonably result in a change to:

(i) The standard of performance, regulation, or policy; or

(ii) A determination on which the standard of performance, regulation, or policy was based.

(b) A petition under paragraph (a) of this section shall be submitted on a form provided by the Administrator, developed in consultation with states, and administered through a portal or other means of direct submission developed by the Administrator, signed by the Governor (or a designee), and must include:

Comment:
- Required to ensure that a State seeking an emergency order or review of a standard, regulation, or policy provides the information the EPA requires on a form developed by EPA directly to the EPA. This manner of submission will ensure petitions are processed and routed efficiently for both EPA and the States.

(1) The purpose of the petition (request for emergency order or a review of a standard, regulation, or policy);

(2) Any applicable scientific or technical information that forms the basis of the petition; and

(3) The direct and indirect benefits if the requested petition were to be granted by the Administrator.

(c) The Administrator shall grant or deny:

(1) A petition under paragraph (a)(1) of this section shall be delegated to the regional designee that covers the geographic area under which the petition is based and by an expedited process to be resolved not later than the date that is 180 days after the date on which the petition is submitted; and

Comment:
- Required to expedite emergency petition process to delegate review to regional jurisdictions that have most appropriate geographic knowledge and expertise to understanding risks and issuing orders in an expedited manner.

(2) A petition under paragraph (a)(2) of this section by not later than the date that is one year after the date on which the petition is submitted.

(d) If the Administrator, or the regional designee in the case of a petition under paragraph (a)(1) of this section, determines to grant a petition:

(1) In the case of a petition under paragraph (a)(1) of this section, the Administrator or their regional designee shall immediately issue the relevant emergency order under CWA section 312(p)(4)(E); or

(2) In the case of a petition under paragraph (a)(2) of this section, the Administrator shall ~~submit~~ publish a Notice of Proposed Rulemaking to the Federal Register to revise the relevant standard, requirement, regulation, or policy under CWA section 312(p)(4) or (6), as applicable, as soon as possible and not later than 30 days after the date of the determination.

(e) If the Administrator, or the regional designee in the case of a petition under paragraph (a)(1) of this section, determines to deny a petition, the Administrator shall ~~submit~~ publish a notice to the Federal Register, that includes a detailed explanation of the scientific,

technical, or operational factors that form the basis of the determination, as soon as possible and not later than 30 days after the date of the determination.

(f) The Administrator, or the regional designee in the case of a petition under paragraph (a)(1) of this section—

(1) recognizes that time is of the essence when the use of an emergency best management practice is necessary; and

(2) will make all reasonable efforts to expedite the issuance of an order requiring emergency best management practice under CWA section 312(p)(4)(E).

Comment:

- Required for consistency with (c)(1) and to ensure that determinations of petitions submitted to the Administrator by a Governor for an emergency order under CWA sec 312(p)(4)(E) or for review of any standard of performance, regulation, or policy promulgated under paragraph (4), (5), or (6) of section 312(p) are published in the Federal Register in a timely manner that complies with the statutory timelines in section 312(p)(7)(C).
- Clause (i) of section 312(p)(7)(C) sets out the 180 day and 1 year timelines.
- Clause (ii) of that section sets out the requirement that the proposed rule be published in the Federal Register within 30 days of the determination. Stating those statutory requirements directly in the regulation will clarify what is required and what States may expect.
- The proposed new paragraph (f) is not required by CWA section 312(p) and is not intended to place new requirements on the Administrator in evaluating emergency petitions submitted by Governors. It is intended to emphasize that in an emergency situation, 180 days can be a very long time, especially if a new ANS or disease is spreading rapidly. We hope this language will guide future Administrators to act as quickly as possible to address true emergency situations.

§ 139.51 Petition by a Governor for the Administrator to establish enhanced Great Lakes system requirements.

(a) The Governors endorsing a proposed standard or requirement under CWA section 312(p)(10)(ii)(III)(bb) may jointly submit to the Administrator for approval each proposed standard of performance or other requirement developed and endorsed pursuant to CWA section 312(p)(10)(ii) with respect to any discharge that is subject to regulation under this part and occurs within the Great Lakes System.

(b) A petition under paragraph (a) of this section must include:

(1) An explanation regarding why the applicable standard of performance or other requirement is at least as stringent as a comparable standard of performance or other requirement under this part;

(2) Information indicating that the standard of performance or other requirement is in accordance with maritime safety; and

(3) Information indicating that the standard of performance or other requirement is in accordance with applicable maritime and navigation laws and regulations.

(c) On receipt of a proposed standard of performance or other requirement under paragraph (b) of this section, the Administrator shall submit, after consultation with USCG, a document to the **Federal Register** that, at minimum:

(1) States that the proposed standard or requirement is publicly available; and

(2) Provides an opportunity for public comment regarding the proposed standard or requirement.

(d) The Administrator shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is at least as stringent as comparable standards and requirements under this part.

(e) In carrying out paragraph (d) of this section, the Administrator:

(1) Shall consult with the Secretary,

(2) Shall consult with the Governor of each Great Lakes State and representatives from the Federal and provincial governments of Canada;

(3) Shall take into consideration any relevant data or public comments received under paragraph (c)(2) of this section; and

(4) Shall not take into consideration any preliminary assessment by the Great Lakes Commission or any dissenting opinion by a Governor of a Great Lakes State, except to the extent that such an assessment or opinion is relevant to the criteria for the applicable determination under paragraph (d) of this section.

(f) Upon review and determination, the Administrator, in concurrence with the Secretary, shall approve each proposed standard or other requirement, unless the Administrator determines that the proposed standard or other requirement is not at least as stringent as comparable standards and requirements under this part.

(g) If the Administrator approves a proposed standard or other requirement, the Administrator shall submit notification of the determination to the Governor of each Great Lakes State and to the **Federal Register**.

(h) If the Administrator disapproves a proposed standard of performance or other requirement, the Administrator shall submit a notice that must include:

(1) A description of the reasons why the standard or requirement is, as applicable, less stringent than a comparable standard or requirement under this part, and

(2) Any recommendations regarding changes the Governors of the Great Lakes States could make to conform the disapproved portion of the standard or requirement to the requirements of paragraph (b) of this section.

(i) Disapproval of a proposed standard or requirement by the Administrator under paragraph (h) of this section shall be considered to be a final agency action subject to judicial review under section 509.

(j) On approval by the Administrator of a proposed standard of performance or other requirement, the Administrator shall establish, by regulation, the proposed standard or requirement within the Great Lakes System in lieu of any comparable standard or other requirement promulgated under CWA section 312(p)(4).

§ 139.52 Application by a State for the Administrator to establish a State No-Discharge Zone.

(a) If any 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 Governor of a State (or a designee) may submit ~~a petition~~ an application to the Administrator to establish a regulation prohibiting one or more discharges, whether treated or not treated, into such waters subject to the application.

Comment:
- Required for consistency with section title and CWA Sec 312(p)(10)(D)

(b) A prohibition by the Administrator under paragraph (a) of this section shall not apply until the Administrator, in concurrence with the Secretary, reviews the state application and makes the applicable determinations described in paragraph (d) of this section and publishes a regulation establishing the prohibition.

(c) An application submitted by the state under paragraph (a) of this section shall be submitted on a form provided by the Administrator, developed in consultation with states, and administered through a portal or other means of direct submission developed by the Administrator, signed by the Governor (or a designee) and must include:

Comment:
- Required to ensure that a State seeking no discharge zone provides the information the EPA requires on a form developed by EPA directly to the EPA.
- This manner of submission will ensure applications are processed and routed efficiently for both EPA and the States.

(1) A certification that a prohibition of the discharge(s) would protect and enhance the quality of the specific waters within the state to a greater extent than the applicable Federal standard provides;

(2) A detailed analysis of the direct and indirect benefits of the requested prohibition for each individual discharge for which the state is seeking a prohibition;

(3) A table identifying the estimated types and estimated number of vessels operating in the waterbody and a table identifying the estimated types and estimated number of vessels that would be subject to the prohibition;

Comment:
- Required as these will be estimates, as it is literally a moving number.

(4) A table identifying the location, operating schedule, draught requirements, pumpout capacity, pumpout flow rate, and fee structure of each facility capable of servicing the vessels that would be subject to the prohibition and available to receive the prohibited discharge. For mobile pumpout facilities and pumper trucks, a narrative description of the coverage area is sufficient;

Comment:

- Required as it can be challenging for pumper trucks and mobile pumpout boats that don't have fixed locations with fixed draught requirements. A list of estimated area of coverage/docks/piers might be a better option.

(5) A map indicating the location of each facility identified in paragraph (5) within the proposed waters. For mobile pumpout facilities and pumper trucks, a narrative description of the coverage area is sufficient;

Comment:

- Required as "facilities" are sometimes moving such as pumper trucks or mobile vessel pumpouts, therefore, difficult to place on a map. A list with an estimated area of coverage might be a better option

(6) A table identifying the location and geographic area of each proposed no-discharge zone; and

(7) A detailed analysis of the impacts to vessels subject to the prohibition, including a discussion of how these vessels may feasibly collect and store the discharge, the extent to which retrofitting may be required, costs that are incurred as a result of the discharge prohibition, and any safety implications.

(d) On application of a State, the Administrator, in concurrence with the Secretary, shall, by regulation, prohibit the discharge from a vessel of one or more discharges subject to regulation under this part, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(1) The prohibition of the discharge would protect and enhance the quality of the specified waters within the state;

(2) Adequate facilities for the safe and sanitary removal and treatment of the prohibited discharge are reasonably available~~, taking costs into consideration,~~ for the water and all vessels to which the prohibition would apply. A determination of adequacy shall consider, at a minimum, water depth, dock size, pumpout facility capacity and flow rate, availability of year-round operations, proximity to navigation routes, and the ratio of pumpout facilities to the population requiring pumpout and discharge capacity of vessels operating in those waters;

Comment:
- CWA sec 312(p)(10)(D)(iii)(I) does not permit the Administrator to take costs into consideration when making a determination on a State petition to prohibit one or more types of discharge into certain State waters. Section 312(p)(10(D)((ii)(I) contains a finite list of factors the Administrator may consider, and does not include any discretionary language permitting consideration of other factors the Administrator deems important. The statutory factor is:
- "(bb) adequate facilities for the safe and sanitary removal and treatment of the discharge are reasonably available for the water and all vessels to which the prohibition would apply;". Adding cost as a consideration is outside the authority of the Administrator and we request language be removed to comply with the statutory language.
- Required as not all vessels require the use of the pumpout if they can hold until discharge outside of US waters or outside of the no discharge zone.

(3) The discharge can be safely collected and stored until a vessel reaches an appropriate facility or location for discharge;

(4) In the case of an application for the prohibition of the discharge of ballast water in port (or in any other location where cargo, passengers, or fuel are loaded and unloaded):

(i) The considerations for adequate facilities described in paragraph (d)(2) of this section apply; and

(ii) The prohibition will not unreasonably interfere with the safe loading and unloading of cargo, passengers, or fuel.

(e) The Administrator shall submit to the Secretary a request for written concurrence on a determination made to establish a prohibition.

(1) A failure by the Secretary to concur with the Administrator 60 days after the date on which the Administrator submits a request for concurrence shall not prevent the Administrator from prohibiting the discharge or discharges, subject to the condition that the Administrator shall include in the administrative record of the promulgation:

(i) Documentation of the request for concurrence; and

(ii) The response of the Administrator to any written objections received from the Secretary relating to the prohibition during the 60-day period beginning on the date of the request for concurrence.

(f) Upon a determination by the Administrator that an application meets the criteria in paragraph (c) of this section, the Administrator shall approve or disapprove an application submitted by a state by not later than 90 days after the date on which the petition is submitted.

Comment:
- Required for consistency with CWA 312(p)(10)(iii)(III).

(g) If the Administrator approves the application, the Administrator shall submit a notice of proposed rulemaking to the Federal Register, as soon as possible and not later than 10 days after the date of the determination. The proposed rulemaking shall be open for

comments for a period of 30 days, unless the Administrator finds the determination is unusually complex and requires a comment period of 60 days.

(h) A prohibition by the Administrator under paragraph (a) of this section shall not apply until the Administrator publishes a final rule establishing the prohibition. The Administrator shall submit the final rule for publication in the *Federal Register* as soon as possible and not later than 30 days after the closing date of the comment period for the proposed rule under paragraph (g). If the Administrator finds that an unusually high number of comments or the complexity of the comments require additional time for review, the Administrator may submit the proposed rule not later than 60 days after the closing date.

Comment:

- Subclause (III) of CWA sec 312(p)(10)(D)(iii) requires the Administrator make a final determination on a State application for a no-discharge zone within 90 days of receiving the application.
- The proposed changes in (g) & (h) are intended to ensure that future Administrators carry out the statutory requirement and intent that determinations of State petitions for a no-discharge zone are effective quickly.
- That requirement is inserted into paragraph (f) of the regulation to clarify the statutory requirement.
- While subclause (I) of section 312(p)(10(D)(iii) requires the prohibition of a discharge pursuant to a State petition be made "by regulation" the intent of this language is not to negate the 90-day determination timeline with a limitless timeline for publication of a proposed and subsequent final rule in the Federal Register.
- As written, a future Administrator could make their determination approving the petition within the required 90 days but never publish it in the Federal Register, preventing it from taking effect.
- The proposed time frame would carry out the intent of Congress that the no-discharge petition process be carried out in a definite and relatively short time frame.