

Statement of Availability of IRS Documents

Rev. Rul. 71–447 and Rev. Proc. 75–50 were published in the *Internal Revenue Bulletin* and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for 26 CFR Part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 1.501(c)(3)–2 is added to read as follows:

§ 1.501 (c)(3)–2 Racial nondiscrimination requirement for private schools.

(a) *In general.* A private school (as defined in paragraph (c) of this section) must be operated exclusively for one or more exempt purposes (as defined in § 1.501(c)(3)–1(d)) to be an organization described in section 501(c)(3) of the Internal Revenue Code (Code). A private school that fails to satisfy the nondiscrimination requirement of paragraph (b) of this section is not an organization described in section 501(c)(3) with respect to any taxable year of the private school described in paragraph (d) of this section.

(b) *Nondiscrimination requirement.* A private school is not operated exclusively for exempt purposes if it adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship or loan program, athletic program, or other school-administered or school-supported program. For purposes of this section, discrimination on the basis of race,

color, or national or ethnic origin includes any discrimination on the basis of race, color, or national or ethnic origin for any purpose.

(c) *Private school defined.* For purposes of this section, the term *private school* means an organization described in section 501(c)(3) (determined without regard to the nondiscrimination requirement of paragraph (b) of this section) and classified as an educational organization described in section 170(b)(1)(A)(ii) of the Code. The term *private school* does not include a governmental unit, an agency or instrumentality of a governmental unit, or an organization that is owned or operated by an agency or instrumentality of a governmental unit. For purposes of this definition, the term *governmental unit* means the United States, a State, an Indian Tribal government (within the meaning of section 7701(a)(40) of the Code), the District of Columbia, a possession of the United States, or a political subdivision of any of the foregoing.

(d) *Applicability date.* This section applies with respect to the taxable year of any private school beginning after May 31, 2027.

Frank J. Bisignano,
Chief Executive Officer.

[FR Doc. 2026–18127 Filed 9–3–26; 8:45 am]

BILLING CODE 4831–GV–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2026–6965; FRL 13340–01–OW]

RIN 2040–AG56

Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) proposes to revise a regulatory definition under the Clean Water Act (CWA) permitting regulations pertaining to discharges in the contiguous zone and ocean. The proposal would revise the regulatory definition of “discharge of a pollutant” to reflect and faithfully implement the statutory exclusion of vessels and other floating craft that add pollutants in the contiguous zone or the ocean from inclusion in the definition of “discharge of a pollutant” or “discharge”, and thus,

from National Pollutant Discharge Elimination System (NPDES) program requirements. The proposed rulemaking would also make conforming and clarifying changes to the NPDES regulatory exclusion for vessels and other floating craft. The effect of these changes would be that the addition of pollutants by a vessel or other floating craft in the contiguous zone or the ocean that is not secured to the seabed would not be a discharge and would not require CWA NPDES permit authorization to add pollutants to those waters.

DATES: Comments must be received on or before October 19, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2026–6965, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** OW-docket@epa.gov. Include Docket ID No. EPA–HQ–OW–2026–6965 in the subject line of the message.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or Courier:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kenda Conley, Water Permits Division, Office of Water (7324G), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–0306; email address: conley.kenda@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
 - A. Purpose of the Regulatory Action

- B. Summary of the Major Provisions of the Regulatory Action
- C. Cost and Benefits
- II. Public Participation
 - A. Written Comments
- III. General Information
 - A. What action is the Agency taking?
 - B. What is the Agency's authority for taking this action?
 - C. What are the incremental costs and benefits of this action?
- IV. Background
 - A. Clean Water Act Statutory and Regulatory Background
- V. Proposed Regulatory Revisions
 - A. What is the Agency proposing?
 - B. Proposed Rulemaking Rationale
 - C. Implementation
 - D. Requests for Comment
- VI. Supporting Information
 - A. Economic Impacts of the Proposed Rulemaking
 - B. Children's Environmental Health
- VII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 14192: Unleashing Prosperity Through Deregulation
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act

I. Executive Summary

A. Purpose of the Regulatory Action

The U.S. Environmental Protection Agency (EPA) proposes to revise an existing regulatory definition under the National Pollutant Discharge Elimination System (NPDES) regulations to reflect and faithfully implement the text of the Clean Water Act (CWA) and enhance regulatory clarity by indicating more explicitly which addition of pollutants are excluded from the NPDES regulations.

B. Summary of the Major Provisions of the Regulatory Action

The definition of “discharge of a pollutant” is central to the implementation of the CWA and the NPDES permitting program. The CWA generally prohibits discharges into navigable waters, the contiguous zone, and the ocean without first obtaining an NPDES permit. See 33 U.S.C. 1311(a)

and 33 U.S.C. ¹ “Discharge of a pollutant” or “discharge” is defined differently based on the geographic location of the receiving water. First, for navigable waters, CWA section 502(12)(A) defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. 1362(12)(A). Second, for waters of the contiguous zone or the ocean, CWA section 502(12)(B) defines “discharge of a pollutant” as “any addition of any pollutant to waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” For each of these jurisdictional waters, the term “point source” is defined by statute to include a vessel or other floating craft. 33 U.S.C. 1362(14). As a result of these statutory definitional differences, additions of pollutants from a vessel or other floating craft into waters of the contiguous zone or ocean are expressly excluded from the definition and not considered “discharges of pollutants.” Consequently, additions of pollutants from vessels or other floating craft in the contiguous zone or ocean are excluded from the scope of the NPDES permitting program. 33 U.S.C. 1311(a), 1342(a), and 1362(14)(B).

The current regulatory definition of “discharge of a pollutant” at 40 CFR 122.2 appears to narrow the statutory exclusion provided by CWA section 502(12) through regulatory means, stating that it only applies to a vessel or other floating craft in the contiguous zone or ocean “which is being used as a means of transportation.” The current regulation at 40 CFR 122.3(a) similarly specifies that a vessel or other floating craft that adds pollutants to the waters of the contiguous zone or the ocean is not excluded from the NPDES permit requirements if it is operating in any additional capacity “other than as a means of transportation.”

The EPA proposes to clarify that NPDES permitting does not apply to pollutant additions from certain vessel offshore operations in the contiguous zone and ocean. Specifically, the proposal, if finalized, would provide that, in either the contiguous zone or the ocean, a vessel or other floating craft that is not secured to the seabed does not require NPDES permit authorization to add pollutants to such waters. The proposed changes would align the regulatory definition in 40 CFR 122.2 with the text of the statutory definition

¹ Generally, and subject to specified conditions, “the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title.”

of “discharge of a pollutant” and would make conforming changes to 40 CFR 122.3. Nothing in this proposal intends to modify the applicability of NPDES permitting to pollutant additions from operations in waters of the United States. Similarly, nothing in this proposal intends to modify the applicability of NPDES permitting to pollutant additions from facilities that are secured to the seabed in either the contiguous zone or the ocean.

C. Costs and Benefits

Costs and benefits may be incurred as a result of implementing the proposed rulemaking. The agency prepared an economic analysis for the proposed rulemaking, available in the docket for this action. The EPA estimates that the proposed rulemaking is expected to result in a total of \$1.8 million dollars in cost savings. Potential foregone benefits of the proposed rule could include the current management of localized seafood processing discharges to ocean waters beyond three miles, with possible effects on marine species and receiving-water quality. The proposed rule would also eliminate permit-required monitoring and reporting, potentially reducing the information available for public review.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2026-6965, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general

guidance on making effective comments.

III. General Information

A. What action is the Agency taking?

To reflect and faithfully implement the text of the CWA, the agency is publishing a proposed rulemaking for public comment that would revise the regulatory definition of “discharge of a pollutant” or “discharge” (and make conforming changes to the NPDES permit exclusion regulation at 40 CFR 122.3) to be consistent with the statutory definition of “discharge of a pollutant,” which excludes the addition of pollutants from vessels or other floating craft in the contiguous zone or ocean from the statutory definition of “discharge of a pollutant” and from the scope of the NPDES permitting program.

B. What is the Agency’s authority for taking this action?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1362 *et seq.*, including sections 301, 402, 501, and 502.

C. What are the incremental costs and benefits of this action?

The agency prepared an economic analysis for the proposed rulemaking, available in the docket for this rulemaking. The EPA estimates that the proposed rule would result in \$1.7 million in annual compliance cost savings for offshore seafood processors operating in the contiguous zone or ocean, and \$50,000 in annual administrative cost savings for the EPA associated with permitting this activity. In total, the proposed rulemaking is expected to result in approximately \$1.8 million in annual cost savings.

Potential foregone benefits of the proposed rule could include the current management of localized seafood processing discharges to ocean waters beyond three miles, with possible effects on marine species and receiving-water quality. The proposed rule would also eliminate permit-required monitoring and reporting, potentially reducing the information available for public review.

IV. Background

A. Clean Water Act Statutory and Regulatory Background

Section 301(a) of the CWA provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge complies with certain other sections of the Act. 33 U.S.C. 1311(a). A person may discharge a pollutant without violating the CWA section 301 prohibition by, for example,

obtaining authorization to discharge under a CWA section 402 NPDES permit (33 U.S.C. 1342). Under CWA section 402(a), the EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section [301(a)]” upon meeting certain conditions required by the Act.

The CWA defines “discharge of a pollutant” in two parts: “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” includes any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. 1362(14). (emphasis added)

Congress adopted the two-part framework for the definition of “discharge of a pollutant” in 1972 to regulate point source additions based on where the addition of a pollutant occurs and the type of source involved, including a distinct treatment for vessels in the contiguous zone and the ocean.²

In 1973, in relation to vessels and other floating crafts operating in the contiguous zone or the ocean, the EPA defined “discharge of pollutant” as “any addition of any pollutant to the waters of the territorial sea, the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 38 FR 13528, 13529 (May 22, 1973).

In 1979, the EPA expanded the regulatory definition of “discharge of a pollutant” as compared to the statutory

² Under the Act, the EPA’s seaward jurisdiction extends to three distinct belts: the territorial seas, the contiguous zone, and the ocean. The “territorial seas” means “the belt of seas measured from the line of ordinary low water along the portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.” 33 U.S.C. 1362(8). The “contiguous zone” means the “entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.” 33 U.S.C. 1362(9). When the CWA was enacted in 1972, Article 24 provided for a contiguous zone—a zone of the high seas contiguous to a country’s territorial sea where a country may exercise certain controls, which may not extend beyond 12 miles from baseline from which the breadth of the territorial sea is measured. Therefore, under the CWA, the nine-mile contiguous zone extends beyond the three-mile territorial seas. “Ocean” means “any portion of the high seas beyond the contiguous zone.” 33 U.S.C. 1362(10).

definition by limiting the scope of the statutory vessel exclusion for additions of pollutants occurring in the contiguous zone and ocean to vessels “being used as a means of transportation.” 44 FR 32854, 32859 (June 7, 1979). The 1979 regulatory definition remains in place and is the subject of this proposed rulemaking. Under the existing regulation, if a vessel or floating craft is not actively engaging in transport (*i.e.*, it is not physically moving across the contiguous zone or the ocean), then such vessel or floating craft is not captured by the regulatory vessel exclusion. Based upon the regulatory language, for example, offshore seafood processor trawlers are presently not considered excluded vessels or other floating crafts because they engage in activity in one general location within the ocean or the contiguous zone and are not actively engaging in transport throughout the operation of the trawler while in the ocean or the contiguous zone. The preamble of the final 1979 rulemaking justified the limitation of the statutory vessel exclusion based upon the agency’s interpretation that the CWA and the NPDES program “is aimed at industrial processes that occur at sea” and that the CWA is “designed to regulate routine industrial discharges.” *Id.* The preamble failed to acknowledge or address why Congress treated additions of pollutants differently based upon geographic location of the receiving water irrespective of the type of source adding pollutants to the receiving water.

V. Proposed Regulatory Revisions

A. What is the Agency proposing?

To reflect and faithfully implement the text of the CWA, the EPA proposes to revise the regulatory definition of “discharge of a pollutant” or “discharge” (and make conforming changes to the NPDES permit exclusion regulation at 40 CFR 122.3) to be consistent with the statutory definition of “discharge of a pollutant,” which excludes the addition of pollutants from vessels or other floating craft in the contiguous zone or ocean from the statutory definition of “discharge of a pollutant” and from the scope of the NPDES permitting program. This proposed rulemaking is expected to only impact the addition of pollutants to waters of the contiguous zone or ocean from vessels or other floating craft.

The EPA proposes to remove the qualifying phrase “which is being used as a means of transportation” from paragraph (b) of the regulatory definition. This revision would match

the regulation to the statutory text of CWA section 502(12)(B), which excludes from the definition of “discharge” any addition of any pollutant from “a vessel or other floating craft” in the contiguous zone or ocean. To align with the ordinary meaning of “vessel or other floating craft,” the agency is also proposing to add the following explanatory sentence to the end of the paragraph under 40 CFR 122.2(b) to differentiate between “vessel or other floating craft” and “fixed” craft: “For the purposes of subsection (b) of this definition, any point source in the contiguous zone or ocean that is secured to the seabed is not a ‘vessel or other floating craft.’ A point source is considered ‘fixed’ or ‘secured’ when it is either permanently attached to the seabed or is a buoyant facility substantially moored to the seabed, such that it cannot be moved without special effort through an undertaking from outside and separate from the facility, to change the location of the facility, or it is a mobile offshore drilling unit engaged in drilling operations.”

The EPA proposes to also make conforming edits to the regulatory language at 40 CFR 122.3(a) to reflect the statutory text of CWA section 502(12)(B). First, as the scope of the NPDES permit requirement as it relates to vessels or other floating craft in the contiguous zone and ocean is addressed under the definition of “discharge of a pollutant” in 40 CFR 122.2, the EPA proposes to amend the language at 40 CFR 122.3(a) so to limit the provision’s applicability to only additions of pollutants to waters of the United States, including the territorial seas. The source and scope of the EPA’s NPDES authority in waters of the United States, including the territorial seas, is different from the source and scope of the EPA’s authority in the contiguous zone or ocean. This proposed rulemaking is based on the rationale that the current approach of addressing discharges from vessels and other floating craft similarly in waters of the United States, including the territorial seas, versus the contiguous zone and the ocean is inconsistent with the text of the CWA and would cause continued confusion.

B. Proposed Rulemaking Rationale

The EPA proposes to revise the scope of the NPDES permitting regulations to reflect and faithfully implement the CWA section 502(12)(B) statutory text defining the “discharge of a pollutant” in the contiguous zone and ocean. The applicability of the section 402 NPDES requirements for all point source discharges into either a “water of the

United States” or the territorial seas is not affected by this proposed rulemaking.

The proposed amended regulations would, if finalized, represent the best reading of CWA section 502(12)(B). In 2024, the Supreme Court decided *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 and concluded that, the court must “determine the best reading of the statute.” *Id.* at 399. Accordingly, agencies are bound to implement, the “best” reading of a statute. The proposed rulemaking, if finalized, would revise aspects of the EPA’s current 40 CFR 122.2 interpretation of the CWA definition of “discharge of a pollutant,” 33 U.S.C. 1362(12) and replace them with the best interpretation. The EPA has re-examined the language of CWA section 502(12)(B) under *Loper Bright* and believes that the current regulatory definition of “discharge of a pollutant” and its related implementing regulations are broader in scope than, and inconsistent with, the statutory definition of “discharge of a pollutant.” Therefore, the EPA proposes to revise the NPDES definitions section at 40 CFR 122.2 to reflect and faithfully implement the statutory scope of what is deemed a discharge of pollutants in the contiguous zone and the ocean.

1. 40 CFR 122.2—Definition of “Discharge of a Pollutant”

The EPA is proposing to revise 40 CFR 122.2 by removing the qualifying phrase “which is being used as a means of transportation” from paragraph (b) of the regulatory definition to match the statutory text at CWA section 502(12)(B). The CWA distinguishes a “vessel or other floating craft” from other point sources in those waters. 33 U.S.C. 1362(12)(B). CWA section 502(12)(A) defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters [*i.e.*, waters of the United States, including the territorial seas] from any point source,” while CWA section 502(12)(B) excludes additions of pollutants from vessels and other floating crafts from the definition if the addition of pollutant occurs in the contiguous zone or the ocean.

The EPA also proposes clarifying amendments to the applicability of the 40 CFR 122.2 exclusion for vessels or other floating craft in the contiguous zone or ocean that are *not secured* to the seabed. In doing so, the EPA retains and does not reopen its longstanding interpretation that a facility on the sea surface that is also *secured* to the seabed does not represent a “vessel or other floating craft” as used in the statutory

definition of “discharge of a pollutant,” but rather that it is a point source that may discharge pollutants. 33 U.S.C. 1362(12). This approach is consistent with CWA section 502(12)(B).

Under the proposal, the addition of pollutants from a free-floating, unsecured vessel or other floating craft in the contiguous zone or ocean is not a discharge of a pollutant and would therefore not be regulated under the NPDES permitting program. By contrast, a vessel or other floating craft securely attached to the seabed in the contiguous zone or ocean would not be considered a “vessel or other floating craft” and instead would be treated as a fixed offshore facility. These securing attachments are different, functionally and structurally, from incidental anchoring or mooring to a buoy, which nearly every vessel or floating craft may use periodically during their voyages. Fixed offshore facilities do not qualify for the statutory vessel exclusion under CWA section 502(12)(B), and as a result, the addition of pollutants from these facilities would be a discharge subject to NPDES regulations. Dumping and other activities by vessels into either the contiguous zone or the ocean may be subject to other statutory or regulatory requirements imposed by other statutes such as the Marine Protection, Research, and Sanctuaries Act (MPRSA), the Oil Pollution Control Act of 1990 (OPA), and the Vessel Incidental Discharge Act (VIDA). With this proposal, the EPA does not intend to change the scope of such requirements under those separate statutory frameworks.

The EPA is requesting comment on several key terms it presently intends to consider to inform any regulatory revision. Based on the language of the statute, the EPA seeks to determine the extent to which it can define the vessels and other floating craft subject to this revision. Consistent with its interpretation of the statutory text, the EPA is proposing “vessel and other floating craft”, as relevant here, to apply to “[a] craft . . . intended for navigation on water.” Webster’s II, New Riverside University Dictionary (1988) (emphasis added). A “floating craft” similarly represents a mode of water transportation; “craft” is defined, as relevant here, as a boat or ship, and a “ship,” in turn, is a “large vessel adapted for deep-water navigation.” *Id.* When secured to the seabed, as described in this proposed rulemaking, a vessel or other floating craft cannot reasonably be seen as engaging in navigation on water, and thus, should not be considered a “vessel or other floating craft” within the meaning of CWA section 502(12)(B). There is no

indication in the text or legislative history of the CWA that Congress intended the phrase “vessel or other floating craft” to have anything other than its ordinary meaning, which centers on whether it regularly engages in navigation on water. Thus, when a vessel or other floating craft navigates in or throughout either the contiguous zone or the ocean, regardless of its specific operational status at any particular time or its other concurrent operational capacities, it is a vessel and its addition of pollutants into the contiguous zone or the ocean are not considered discharges, and are therefore excluded from NPDES permitting requirements.

The EPA also seeks comment on the applicability and appropriateness of alternative definitions of “vessels” or “other floating craft” that would determine which “vessels or other floating craft” would not be deemed a “discharge of pollutant” in the ocean or contiguous zone. For example, the United States Coast Guard (USCG) relies on 1 U.S.C. 3 to define “vessel” as “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” The EPA specifically requests comment on whether the EPA should utilize the same definition of “vessel” as provided for in 1 U.S.C. 3 or if the CWA’s use of the more expansive phrase “vessel and other floating craft” encompasses a different type or category of vessel than contemplated and identified in 1 U.S.C. 3. The EPA specifically requests comment on whether the EPA should utilize the same definition of “vessel” as provided for in 1 U.S.C. 3 or if the CWA’s use of the more expansive phrase “vessel and other floating craft” encompasses a different type or category of vessel than contemplated and identified in 1 U.S.C. 3.

Unlike a vessel or other floating craft that meets the ordinary (*i.e.*, navigation-focused) meaning of that term, an offshore facility secured to the seabed in the manner described by the proposed regulation cannot be said to be navigating and thus does not appear to be a vessel. For the purposes of this regulation, a structure may not be a “vessel or other floating craft” and therefore may not be a point source in the contiguous zone or the ocean if it is secured to the seabed when it is either permanently attached to the seabed, or it is a buoyant facility substantially moored to the seabed, such that it cannot be moved without special effort through an undertaking from outside and separate from the facility, to change the location of the facility, or it is a

mobile offshore drilling unit engaged in drilling operations.³ However, the EPA seeks comment on when a structure in the contiguous zone or ocean may be subject to section 402 because it is not a “vessel or other floating craft”. The EPA seeks comment on what may differentiate a structure from being a “vessel or other floating craft” including whether it is deemed “fixed” or “secured.” The EPA also seeks comments on whether the EPA has fully identified all potential structures and “vessels and other floating craft” that may be impacted by this rulemaking.

In *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115 (2013), the Supreme Court of the United States held that to be a vessel under 1 U.S.C. 3, a structure’s physical “characteristics and activities” need to be such that a “reasonable observer” would conclude that the structure was designed to a practical degree to carry “people or things” on the water. Rather than relying upon any single structural characteristic to reach its decision, the Court instead focused on the phrase “capable of being used as a means of transport[.]”

The text of the statutory exclusion for the addition of pollutants from a vessel or other floating craft in the contiguous zone or the ocean expressly constrains the agency’s regulatory discretion and EPA does not believe it may substantively narrow the scope of the exclusion without any statutory support. Based on commonly understood meanings of “vessel” and “floating craft,” the best reading of the CWA is that it distinguishes between a vessel that operates freely on the water surface versus a land-based facility or a facility on the water surface that is secured to the seabed to conduct its operations.

C. Implementation

Under this proposal, a vessel or floating craft operating as a mobile facility (*i.e.*, a facility that navigates on

³ This view is consistent with the EPA’s historic understanding and rationale for applying the statutory exclusion for addition of a pollutant from a vessel or other floating craft into waters of the contiguous zone and ocean, articulated in its early regulations. As the EPA General Counsel reasoned in a General Counsel Opinion dated May 13, 1974, “[I]t appears that the [CWA] was intended to cover ocean outfalls from land, from artificial islands, and from other fixed structures . . . the phrase ‘vessels or other floating craft’ was intended to exclude those ‘vessels or other floating craft’ which are not ‘fixed.’” Applying this reasoning, mobile oil and gas rigs, whether barges, semi-submersible rigs, jack-up rigs or drilling ships are all subject to FWPCA jurisdiction under CWA section 301 when they are engaged in drilling operations since at that time they are ‘fixed.’” All such oil and gas facilities are physically “secured” to a fixed wellhead on the seabed via a riser pipe.

water and is not secured to the seabed) that presently requires a permit under NPDES to add pollutants into the contiguous zone or the ocean would no longer be considered a discharger and therefore would not be subject to NPDES permitting requirements. For example, NPDES permit authorization would no longer be required for discharges into the contiguous zone or ocean from offshore seafood processor trawlers because these facilities are not secured to the seabed. By contrast, offshore facilities that are secured to the seabed to conduct their operations and add pollutants into either the contiguous zone or the ocean would remain point sources discharging pollutants subject to NPDES permitting requirements under the proposal.^{4 5}

As a general matter, the effect of this proposed regulation, if finalized, would be that the addition of pollutants into the contiguous zone or the ocean from a vessel that is not secured to the seabed would not be deemed a discharge and would not be subject to the NPDES program. This proposed regulation, if finalized, is not intended to implement any parts of the CWA other than sections 402 and 502, nor would it purport to implement any other statutes that may regulate releases or operations from any such vessels in the contiguous zone or the ocean.

D. Requests for Comment

The EPA is seeking comment on the proposed revisions to the NPDES definitions regulation and exclusion regulations at 40 CFR 122.2 and 122.3(a), respectively. The agency specifically requests input on the following:

1. Any additional impacts on facilities currently subject to the NPDES permitting requirement that are not identified in this proposal, and impacts to other potentially affected sectors that may not be captured in the cost analysis.

2. Alternative regulatory approaches or text that would reflect the best reading of the statute, or otherwise narrow or better target the scope of potentially affected categories of facilities, including suggested revisions

⁴ These facilities also include surface facilities engaged in Offshore Oil and Gas Exploration and Commercial Recovery, whether from fixed platforms, drillships, or semi-submersibles that are secured to a wellhead on the seabed via a riser pipe.

⁵ The EPA also issues NPDES permits for discharges from marine aquaculture facilities secured to the seabed of the ocean, and such facilities would not be deemed a “vessel or other floating craft,” would not qualify for exclusion from NPDES permitting requirements, and would continue to be regulated as point sources, wherever located in marine waters.

to definitions, or examples. EPA specifically requests comment on the proposed definitions, or any part of the proposed definitions, of “vessel and other floating craft” “secured,” and “buoyant facility” and how these definitions align with those used by other agencies for the same terms (e.g., USCG).

3. Whether to modify the regulation to codify statutory amendments since 1986 (see section V.A.2 of this preamble for further detail).

4. Any information on implementation considerations for this proposed approach and how they relate to determining the “best reading” of CWA section 502(12)(b).

5. Any suggestions to improve the clarity and readability of the proposed revisions.

VI. Supporting Information

A. Economic Impacts of the Proposed Rulemaking

A copy of the EPA’s cost analysis for the proposed rulemaking, titled, “Draft Economic Analysis for the Proposed Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions,” is available in the docket for this action.

B. Children’s Environmental Health

This action is not subject to the EPA’s Children’s Health Policy (<https://www.epa.gov/children/childrens-health-policy-and-plan>) because the proposed regulatory revisions address the implementation of the Clean Water Act and do not concern human health.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, “Draft Economic Analysis for the Proposed Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions,” is available in the docket.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. This proposed rulemaking is expected to provide burden reduction by narrowing the scope of the regulatory text to more closely align with the statutory text in the CWA. Thus, the agency anticipates that fewer CWA permits will be required, which will result in cost savings and reduced regulatory burden.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The information collection burden for offshore entities currently covered by NPDES permits is accounted for under EPA’s NPDES Program Information Collection Request (OMB control no. 2040–0004, EPA ICR no. 0229.25). EPA is requesting a temporary control number (EPA ID 7830.01) to cover the information collection activities required under this rulemaking action, because of the concurrent timing of this proposed rule and the renewal of the NPDES Program ICR (OMB control no. 2040–0004). EPA will submit a request to merge the ICR for this proposed rule (EPA ID 7830.01) into the base ICR (EPA ICR no. 0229.25) at a later date. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Under the proposed rule, currently permitted entities operating in the contiguous zone or ocean that are not secured to the seabed would no longer be subject to NPDES reporting and recordkeeping requirements. These requirements include completing and submitting notices of intent, notices of termination, discharge monitoring reports, noncompliance reports, annual reports, best management practices plans, analytic sampling requirements, and recordkeeping requirements. The associated information collection burden would be eliminated for those entities. In the interest of transparency and public understanding, the EPA has provided here relevant portions of the burden assessment of the proposed rule. More information about the burden assessment can be found in the supporting statement for the ICR.

- *Respondents/affected entities:* 79.
- *Respondent’s obligation to respond:* Mandatory, pursuant to sections 301, 302, 304, 306, 307, 308, 316(b), 401, 402, 403, 405, and 510 of the CWA; the 1987 Water Quality Act (WQA) revisions to CWA section 402(p); 40

(CFR) parts 122, 123, 124, and 125 (and parts 501 and 503 for Biosolids); and the Great Lakes Critical Programs Act (CPA).

- *Estimated number of respondents:* 0.

- *Frequency of response:* 0.

- *Total estimated burden:* 0 hours (per year). Burden is defined at 5 CFR 1320.3(b).

- *Total estimated cost:* \$0 (per year), includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Submit your comments on the Agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, EPA’s plan to merge the ICR for this rulemaking action (EPA ID 7830.01) into the base ICR (0229.25), and other aspects of this collection to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB’s Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule.

Permitted offshore activities include oil and gas exploration/production, aquaculture, and seafood harvesting/processing, but the proposed rule applies only to discharges from vessels or other floating craft that are not secured to the seabed and that occur outside waters of the United States. As a result, most entities, such as ocean placer mining (exclusively in waters of the United States), offshore oil and gas production (secured via risers), and most offshore aquaculture (net pens secured), are unlikely to be affected; the primarily potentially affected operations

are offshore seafood harvesting and processing from vessels that discharge in the contiguous zone or the ocean.

Small business size for the seafood processing industry defined in 13 CFR 121.201 for the NAICS code 311710 is 750 employees. Based on the industry establishment size data, small entities account for at least 89 percent of establishments in this sector. As such, they are likely to account for 71 of the 79 permittees covered under the Region 10 offshore seafood processing general permits that will benefit from the cost savings of this proposed rulemaking. Dividing the total NPDES permit requirement cost savings (\$1,700,000) by the number of establishments (79) yields per establishment cost savings of nearly \$22,000, which does not impose a significant adverse impact. Therefore, EPA estimated that 0 out of the estimated 71 small entities are significantly impacted by this regulation. We therefore conclude that this action would relieve regulatory burden for all directly regulated small entities. For more information, see the “Draft Economic Analysis for the Proposed Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions,” available in the docket for this action.

E. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized Tribal government, nor preempt Tribal law. The EPA directly implements the NPDES program in Indian Country (except in Maine); therefore, in compliance with the *EPA Policy on Consultation and*

Coordination with Indian Tribes, the agency plans to consult with Tribal officials upon publication of the proposed rulemaking to provide Tribes an opportunity to provide meaningful and timely input into the development of the regulatory revisions.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 122

Environmental protection, Water pollution control.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 122 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 122.2 by revising the definition of “Discharge of a pollutant” paragraph (b) to read as follows:

§ 122.2 Definitions.

* * * * *

Discharge of a pollutant means:

* * * * *

(b) Any addition of any pollutant or combination of pollutants to waters of the “contiguous zone” or the ocean from any point source other than a vessel or other floating craft. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any “indirect discharger.” For the purposes of paragraph (b) of this definition, any point source in the contiguous zone or ocean that is secured to the seabed is not a “vessel or other floating craft.” A point source is considered “secured” when it is either permanently attached to the seabed or is a buoyant facility substantially moored to the seabed, such that it cannot be moved without special effort through an undertaking from outside and separate from the facility, to change the location of the facility, or it is a mobile offshore drilling unit engaged in drilling operations.

* * * * *

■ 3. Amend § 122.3 by revising paragraph (a) to read as follows:

§ 122.3 Exclusions.

* * * * *

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in waters of the United States, including the territorial seas, in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility.

* * * * *

[FR Doc. 2026–18134 Filed 9–3–26; 8:45 am]

BILLING CODE 6560–50–P