SEC. ___. REGULATION OF DISCHARGES INCIDENTAL TO THE NORMAL OPERATIONS OF A VESSEL OF THE ARMED FORCES UNDER THE FEDERAL WATER POLLUTION CONTROL ACT.

Subparagraph (B) of section 312(n)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1322(n)) is amended by adding at the end the following: "When conducted in compliance with regulations promulgated pursuant to paragraph (4), any discharge incidental to the normal operation of a vessel of the Armed Forces is considered a federally permitted release within the meaning of paragraph (10) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(10)), and is excluded from the definition of solid waste under paragraph (27) of section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative proposal would amend existing law.]

Section-by-Section Analysis

This proposal would specify that, as is the case for non-military or non-recreational vessels, discharges incidental to the normal operation of vessels of the Armed Forces regulated under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) are not to be regulated under the Solid Waste Disposal Act (SWDA) (42 U.S.C. 6901 et seq.) or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.). This would avoid potential confusion about whether such incidental discharges should be subject to duplicative regulation under the SWDA or CERCLA. As a matter of practice, this proposal reflects the views of the United States (U.S.) Environmental Protection Agency (EPA) and the Department of Defense (DoD) for how these three Acts should be interpreted and implemented.

Section 312(n) of the Clean Water Act (Uniform National Discharge Standards for Vessels of the Armed Forces) provides for regulation of any discharge that is incidental to the normal operation of a vessel of the Armed Forces. Section 312(n) provides for a regulatory program based on criteria that are intended to be as protective as the technology-based criteria used to develop the Vessel General Permit section 402 of the Clean Water Act, which applies to discharges incidental to the normal operation of non-military, non-recreational vessels. Both the SWDA and CERCLA include exclusions for discharges incidental to the normal operation of non-military, non-recreational vessels that are regulated under section 402 of the Clean Water

Act. Neither statute, however, references the equivalent discharges from vessels of the Armed Forces which are regulated under 312(n) of the Clean Water Act. Both the SWDA and CERCLA were enacted prior to the CWA amendments establishing the Uniform National Discharge Standards (UNDS) for vessels of the Armed Forces, which did not include conforming amendments in the other statutes. Nonetheless, as the laws are currently written, it could appear that Congress may have inadvertently treated Armed Forces vessels and non-military vessels differently under the SWDA and CERCLA. In practice, EPA has not sought to treat Armed Forces vessels differently with respect to CWA section 312(n) discharges. This proposal would align the statutes with the historic treatment of Armed Forces vessels in practice to make clear that discharges incidental to the normal operation of a military vessel, like those from a non-military, non-recreational vessel, are to be regulated under the Clean Water Act.

The Solid Waste Disposal Act does not regulate point source discharges which are already regulated under section 402 of the Clean Water Act via the National Pollutant Discharge Elimination System (NPDES) program. This is reflected by the fact that the definition of "solid waste" under subsection 1004(27) of the SWDA does not include these discharges:

> The term "solid waste" . . . does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

The NPDES program requires municipal, industrial, and commercial facilities that discharge wastewater from a point source (discrete conveyance such as a pipe, ditch, or channel) to obtain a permit before discharging into the waters of the United States. The definition of "solid waste" under the SWDA recognizes that the most appropriate regulatory framework for regulating NPDES discharges is the Clean Water Act and that regulation under the SWDA of discharges subject to a NPDES permit would be duplicative and therefore unnecessary.

A point source discharge incidental to the normal operation of a non-military, non-recreational vessel that is regulated under a NPDES permit is therefore not subject to regulation under the SWDA. This proposal would specify that, as is the case for non-military, non-recreational vessels, the definition of "solid waste" under the SWDA similarly does not include any discharge incidental to the normal operation of a vessel of the Armed Forces, when these discharges are regulated under section 312(n) of the Clean Water Act.

Under CERCLA, section 103 (42 U.S.C. 9603) requires that the person in charge of a vessel or facility immediately notify the National Response Center whenever a reportable quantity or more of a CERCLA hazardous substance is released in any 24-hour period, unless the release is "federally permitted." Section 103 imposes penalties for the failure to comply with this notice requirement. Section 101(10) of CERCLA currently excludes eleven "federally permitted releases" from the section 103 notification requirements, to include several discharges

regulated under section 402 of the Clean Water Act.[1]

This proposal would modify section 312(n)(6)(B) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1322(n)(6)(B)), to specify that, when in compliance with section 312(n)(4) of the FWPCA, "discharges incidental to the normal operation of a vessel of the Armed Forces" are excluded from the definition of "solid waste" under subsection 1004(27) of the SWDA (42 U.S.C. 6903(27)) and "a discharge incidental to the normal operation of a vessel of the Armed Forces in compliance with the regulations" is added to the definition of "Federally permitted release" under section 101(10) of the CERCLA (42 U.S.C. 9601(10)), thereby treating such discharges comparably to the same or similar discharges from non-military, non-recreational vessels. This change is consistent with current practice and how DoD and EPA have historically implemented the FWPCA, SWDA, and CERCLA.

Budget Implications: This proposal does not have negative budget implications for the Department of Defense. The first table below details Department of Defense resource requirements associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
Total	$0.00	$0.00	$0.00	$0.00	$0.00	--	--	--	--

Changes to Existing Law:

(1) This proposal would make the following changes to 33 U.S.C. 1322(n):

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(6) Effect on other laws

(A) Prohibition on regulation by States or political subdivisions of States.

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[1] Discharges currently enumerated as Federally permitted releases under CERCLA which are regulated instead under the Clean Water Act are as follows: (1) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342); (2) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (3) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; and (4) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act (33 U.S.C. 1317(b), (c)) and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act (33 U.S.C. 1342).

(B) Federal laws. This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel. When conducted in compliance with regulations promulgated pursuant to paragraph (4), any discharge incidental to the normal operation of a vessel of the Armed Forces is considered a federally permitted release within the meaning of paragraph (10) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(10)), and is excluded from the definition of solid waste under paragraph (27) of section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).