



Vessel Incidental Discharge Act

National Standards of Performance
Proposed Rule

Disclaimer

The following EPA presentation is solely intended to provide information to the public on the recently proposed standards under VIDA. This presentation does not represent final agency decisions regarding the proposed standards, and does not create any rights or obligations.



Outline

- **Overview of U.S. Regulation of Incidental Discharges from Vessels**
 - History of EPA Regulation of Vessel Discharges in the U.S.
 - 2018 Vessel Incidental Discharge Act (VIDA)
- **EPA Proposed National Standards of Performance**
 - Scope
 - General and Specific Standards, Including for Specific Waterbodies
 - Changes from the 2013 VGP and U.S. Coast Guard Regulations
 - State Procedures
 - Regulatory Impact and Paperwork Burden Estimates of the Proposed Rule
- **Stakeholder Engagement Opportunities**
 - Virtual Public Meetings
 - Submitting Formal Comments



History of EPA Commercial Vessel Incidental Discharge Regulations

- EPA has long held that the Clean Water Act (CWA) did not require EPA to regulate discharges incidental to the normal operation of a vessel (“incidental discharges”)
- However, as a result of a lawsuit, EPA began regulating vessel incidental discharges in 2008 through the CWA Section 402 National Pollutant Discharge Elimination System (NPDES) Program
 - **Vessel General Permit (VGP)** – issued in 2008 and reissued in 2013
 - **Small Vessel General Permit (sVGP)** – issued in 2014 for vessels less than 79 feet in length.
- U.S. Coast Guard, states, and local authorities imposed various other discharge requirements during this same time





The Vessel Incidental Discharge Act: A Quick Overview

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida>

The Vessel Incidental Discharge Act: Overview

- The **Vessel Incidental Discharge Act** (VIDA) was enacted on December 4, 2018 and changes the U.S. framework for regulating incidental discharges from commercial vessels by adding a new subsection (p) to Section 312 of the Clean Water Act
- VIDA streamlines the patchwork of federal, state, and local requirements for the commercial vessel community
- VIDA requires EPA and the U.S. Coast Guard (USCG) to develop new regulations that will replace the existing VGP requirements and the USCG ballast water management regulations
- VIDA excludes small vessels and fishing vessels of all sizes from regulation of incidental discharges under CWA Section 312, except ballast water



EPA and USCG Roles for Developing the New CWA 312 Regulations


- EPA shall develop regulations establishing national standards of performance
- U.S. Coast Guard shall develop corresponding implementing regulations to ensure, monitor, and enforce compliance with the new EPA standards
- EPA and U.S. Coast Guard shall review the VIDA regulations every five years and update, as necessary



Interim Requirements (4 Dec 2018 to ~2022)

- The final EPA national standards of performance developed pursuant to VIDA will be effective only after corresponding U.S. Coast Guard implementing regulations are final, effective, and enforceable. Until then:
 - **For large commercial vessels, except for fishing vessels:** The provisions of the EPA 2013 VGP, the USCG ballast water regulations, and state and local government requirements remain in force and effect
 - **For small commercial vessels and fishing vessels of any size:** Only the ballast water provisions of the EPA 2013 VGP, the USCG regulations, and state and local government requirements remain in force and effect





The EPA Proposed National Standards of Performance

<https://www.epa.gov/vessels-marinas-and-ports/commercial-vessel-discharge-standards>

Baseline for EPA Standards under VIDA

- Generally at least as stringent as the existing 2013 VGP requirements
- Technology-based
- Numeric, best management practices, or a combination of both
- May distinguish between class, type, size, and age of vessels
- Developed in consultation with the U.S. Coast Guard and U.S. state governors



VIDA: Overview of Proposed EPA Standards

- Will apply to approximately 82,000 international and domestic vessels
- Proposed standards are drafted to enhance clarity, implementation, and enforceability of similar VGP requirements
- Proposed standards reflect changes to the VGP requirements where new information and technology is demonstrated to be available and achievable
- Pursuant to VIDA, proposed standards are technology-based only (unlike the VGP which also considered protection of water quality)



VIDA: Overview of Proposed EPA Discharge Standards – New CFR Part - 40 CFR Part 139

- Subpart A – Scope
- Subpart B – General Standards for Discharges Incidental to the Normal Operation of a Vessel
- Subpart C – Standards for Specific Discharges Incidental to the Normal Operation of a Vessel
- Subpart D – Special Area Requirements
- Subpart E – Procedures for States to Request Changes to Standards, Regulations, or Policy Promulgated by the Administrator



Subpart A - Scope

40 CFR §§ 139.1 – 139.3

- Proposed standards applicable to discharges incidental to the normal operation of:
 - Commercial vessels, excluding fishing vessels (≥ 79 ft. in length)
 - Other non-recreational, non-Armed Forces vessels, e.g., research and emergency rescue vessels, ≥ 79 ft. in length)
 - Ballast water from small commercial vessels (< 79 ft. in length) and fishing vessels of all sizes
- Applicable in waters of the United States and waters of the contiguous zone (under the CWA: out to 12 miles from shore)
- Definitions are included in the proposed rule for 60 words, most of which are taken directly or adapted from existing statutes, regulations, and permits
- Does NOT apply to sewage unless mixed with graywater. Regulatory requirements for sewage remain unchanged and unaffected by VIDA.



Subpart B - General Discharge Standards

40 CFR §§ 139.4 – 139.6

- General Operation and Maintenance
- Biofouling Management
- Oil Management



Subpart C – 20 Equipment-Specific Discharge Standards 40 CFR §§ 139.10 – 139.29

- Ballast tanks
 - Bilges
 - Boilers
 - Cathodic Protection
 - Chain Lockers
 - Decks
 - Desalination and Purification Systems
 - Elevator Pits
 - Exhaust Gas Emission Control Systems
 - Fire Protection Equipment
 - Gas Turbines
 - Graywater Systems
 - Hulls and Associated Niche Areas
 - Inert Gas Systems
 - Motor Gasoline and Compensating Systems
 - Non-oily Machinery
 - Pools and Spas
 - Refrigeration and Air Conditioning
 - Seawater Piping
 - Sonar Domes
- Proposing to Exclude:*
- Fish Hold Effluent
 - Boat Engine Wet Exhaust

* VIDA excludes small vessels and fishing vessels of all sizes from further federal regulation of incidental discharges, except ballast water. Therefore, EPA does not believe that these VGP discharges fall under the scope of VIDA.



Proposed Standards are Substantially Similar to the 2013 VGP

- Standards that are substantially the same as the requirements of the 2013 Vessel General Permit (VGP)
- Discharges from:
 - Boilers
 - Cathodic Protection
 - Chain Lockers
 - Decks
 - Elevator Pits
 - Fire Protection Equipment
 - Gas Turbines
 - Inert Gas Systems
 - Motor Gasoline and Compensating Systems
 - Non-oily Machinery
 - Pools and Spas
 - Refrigeration and Air Conditioning
 - Sonar Domes



Proposed Standards are Slightly Modified from the 2013 VGP

- Standards that are generally consistent with, but slightly modified from, the 2013 Vessel General Permit (VGP)
- Discharges from:
 - Bilges
 - Desalination and Purification Systems



Proposed Changes from the 2013 VGP are More Significant

- Standards that contain the greatest modifications from the 2013 Vessel General Permit (VGP)
- Discharges from:
 - Ballast Tanks
 - Exhaust Gas Emission Control Systems
 - Graywater Systems
 - Hulls and Associated Niche Areas
 - Seawater Piping



Subpart D: Special Area Requirements

40 CFR § 139.40

- “Federally-Protected Waters”
(consistent with 2013 VGP, Appendix G approach for waters federally protected wholly or in part for conservation purposes)
 - Consolidates specific discharge requirements for these waters in one section.



Subpart E - State Procedures

40 CFR §§ 139.50 – 139.52

- Proposed procedural requirements for VIDA-specific state petitions/applications to EPA to:
 - Establish different discharge standards, including enhanced Great Lakes requirements
 - Issue emergency orders
 - Establish no-discharge zones (NDZs)



Proposed Rule Regulatory Impact Analysis and Paperwork Burden Estimates

- Overall savings of \$12.4 million annually, largely the result of a \$22.2 million savings from the VIDA exclusion of small vessels and fishing vessels from federal incidental discharge requirements
- Two incremental annual cost increases projected to include:
 - \$4.3 million for proposed enhanced graywater and seawater piping requirements
 - \$5.5 million for VIDA-mandated ballast water exchange and flushing requirements
- No vessel operator paperwork burden from proposed rule
- New burden potential for voluntary state petitions to EPA requesting more stringent requirements
- Existing VGP burden will be updated by analysis under subsequent U.S. Coast Guard implementing regulations





Stakeholder Engagement Opportunities

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>

Virtual Public Meetings

Schedule:

- November 9, 2020 – 2:00 PM – 4:00 PM EST
- November 10, 2020 – 10:00 AM – 12:00 PM EST
- November 17, 2020 – 12:00 PM – 2:00 PM EST

Primary focus: Providing an introduction to the proposed standards, highlighting key changes from the existing regulatory framework, and describing how to submit public comments

** Not a platform for submitting official comments on the proposed rule **

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>



Submitting Official Comments

- Comment period: comments due no later than November 25, 2020
 - *EPA posting of a signed, pre-publication version of the proposed rule provides additional review time in advance of the formal 30-day comment period*
- Visit [regulations.gov](https://www.regulations.gov); access docket ID: **EPA-HQ-OW-2019-0482**
- Instructions on [regulations.gov](https://www.regulations.gov) for comment submission
- Generally, EPA will not consider comments submitted in other ways

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>



Tips for Submitting Comments

- Include the docket ID number and other identifying information of the proposed rule
- Outline comments according to proposed rule outline
- Explain why you agree or disagree with the proposed language
- Include any scientific, technical or economic data to support your comment
- Suggest alternative language, provide examples
- Pay attention to requests in the proposed rule for public input on specific topics

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>



Requests for Public Input on Specific Topics

- How best to define areas with coral reefs and the public availability of navigational charts for identifying such areas
- Potential treatment and reporting requirements for vessels with ballast water operating either exclusively or primarily on the Great Lakes
- Use of a static list of federally-protected waters consistent with the approach used in the VGP and the additional discharge-specific requirements in those waters
- Details on the use of non-fluorinated foams for firefighting certification, inspection, testing, training, and maintenance
- Procedures for state petitions to EPA for more stringent requirements, such as for emergency orders and no-discharge zones

<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>



EPA Webpages and Contacts

Webpages:

- **Commercial Vessel Discharge Standards:**
<https://www.epa.gov/vessels-marinas-and-ports/commercial-vessel-discharge-standards>
- **VIDA Engagement Opportunities:**
<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>

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