



EPA Vessel Incidental Discharge National Standards of Performance

Great Lakes Panel on Aquatic Nuisance Species

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Jack Faulk (faulk.jack@epa.gov)
US EPA Office of Water

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Outline

- 2018 Vessel Incidental Discharge Act (VIDA) Overview
- EPA Proposed National Standards of Performance
 - Scope
 - General and Specific Discharge Standards, Including for Specific Waterbodies
 - Changes from the 2013 VGP and U.S. Coast Guard Regulations
- State Procedures
- Stakeholder Engagement Opportunities



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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 (CWA)
- 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 Vessel General Permit (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



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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 the U.S. Coast Guard shall review the VIDA regulations every five years and update, as necessary



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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.



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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 139

[EPA-HQ-OW-2019-0482; FRL-10015-54-
OW]

RIN 2040-AF92

Vessel Incidental Discharge National Standards of Performance

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

The EPA Proposed National Standards of Performance



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 USCG and U.S. State governors



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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 (the VGP includes a combination of technology-based and water quality-based standards)
- Proposed standards do not address:
 - Self-monitoring, self-inspection, reporting, recordkeeping, corrective action, and training and education (to be established by USCG)
 - State-specific requirements



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Framework for 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
- Appendix A to Part 139 – Federally-Protected Waters



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Subpart A - Scope

40 CFR §§ 139.1 – 139.3

- Coverage:
 - 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)
- Specifies that the proposed standards would not apply if compliance with these standards would compromise the safety of life at sea



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Subpart B - General Discharge Standards

40 CFR §§ 139.4 – 139.6

- General Operation and Maintenance
- Biofouling Management
 - Would require a vessel-specific biofouling management plan to be developed and followed with a goal to prevent macrofouling.
- Oil Management



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Subpart C – 20 Discharge-Specific 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.



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Proposed Standards Contain More Substantial Changes from the 2013 VGP

Proposed standards that contain more substantial changes from the 2013 VGP include:

- Ballast Tanks
- Exhaust Gas Emission Control Systems
- Graywater Systems
- Hulls and Associated Niche Areas
- Seawater Piping



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Proposed Changes from the 2013 VGP Are More Substantial

Ballast Tanks (§ 139.10)

- Incorporate VIDA–mandated ballast requirements (e.g., exchange and saltwater flushing requirements, including for vessels entering the Great Lakes, and minimum Pacific Region requirements, including for low-salinity ballast water)
- Would remove Best Management Practice (BMP) to minimize or avoid uptake in certain areas and situations (such as, near sewage outfalls, near dredging, in darkness, where infestations/populations of harmful organisms/pathogens known to exist)
- Would extend the exemption for meeting ballast water numeric discharge standards from Lakers built prior to January 1, 2009 (in the 2013 VGP) to all vessels operating exclusively on the Great Lakes regardless of build year
- Would no longer exclude unmanned, unpowered seagoing barges and barges that are part of integrated units from needing to meet the ballast water discharge standard
- Would require all vessels to maintain and keep any sea chest screen fully intact (expanded from just Lakers)



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Proposed Changes from the 2013 VGP Are More Substantial

Hulls and Associated Niche Areas (§ 139.22)

- Would prohibit application of cybutryne on vessel hulls and niches and require removal or sealing of any coatings containing cybutryne after implementation date
- Would prohibit cleaning hull with a biofouling exceeding a fouling rating of FR-20 unless the fouling is local in origin and cleaning does not result in a plume or cloud of paint, or an in-water cleaning and capture system (according to certain listed specifications) is used
- Would prohibit in-water cleaning on sections of biocidal antifouling coating that shows excessive cleaning actions or blistering
- Would prohibit the discharge from in-water cleaning of vessel hulls and niche areas into federally-protected waters



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Proposed Changes from the 2013 VGP Are More Significant

Seawater Piping (§ 139.28)

- Would require marine growth prevention systems (MGPS) for vessels with macrofouling
- Would require flushing/chemical cleaning to manage macrofouling if preventative measures unsuccessful
- Would prohibit discharges resulting from such flushing/cleaning while in port and from chemical dosing into federally-protected waters



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Subpart D: Special Area Requirements

40 CFR § 139.40

“Federally-Protected Waters” proposed standards (§ 139.40)

- Would consolidate specific discharge requirements for these waters in one section
- Would add prohibitions for discharges from chain lockers, decks, hulls and associated niche areas, and seawater piping
- Would reference the list of areas with federally-protected waters as Appendix A to Part 139



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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)



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General State Authorities (Post Final USCG Regulations)

- Generally preempt adoption or enforcement of more stringent state or local regulations for incidental discharges from vessels covered under VIDA regulations [CWA 312(p)(9)(A)(i)]
- EPA, the USCG, and states can have enforcement authority (under CWA Section 309) of the federal requirements established under VIDA
- **State authority over large vessels and ballast from small and fishing vessels:**
 - Identical or lesser non-CWA § 402 State reqs [CWA § 312(p)(9)(A)(ii)]
 - Fees (for States that had fees pre-enactment) [CWA § 312(p)(9)(A)(iv)]
 - Civil or criminal actions [CWA § 312(p)(9)(D)]
 - Inspection authority [CWA § 312(p)(9)(F)]
 - CWA § 401 certification requirements related to any non-402 federal permits
- **Non-ballast from small and fishing vessels:**
 - Any non-CWA § 402 State requirements (including, without limitation, fees, civil/criminal actions, inspections) [CWA § 312(p)(9)(C)(ii)(II)]



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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
- Procedures for state petitions to EPA for more stringent requirements, such as for emergency orders and no-discharge zones



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Submitting Comments

Submitting Official Public Comments:

- Comments due **no later than November 25, 2020**
- Instructions on <https://www.regulations.gov> for comment submission
 - Access docket ID: EPA-HQ-OW-2019-0482 for VIDA proposed standards

Primary Focus of Public Meetings: Provide an overview of the proposed standards and the public comment submission process.

- Questions submitted during today's public meeting should be geared toward helping you prepare and submit official public comments.
- This meeting is not a platform for submitting official comments on the proposed rule. Please direct formal comments to the docket.



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Online Resources: EPA Webpages

- **Commercial Vessel Discharge Standards page:**
<https://www.epa.gov/vessels-marinas-and-ports/commercial-vessel-discharge-standards>
- **Vessel Incidental Discharge Act:**
<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida>
- **Stakeholder Engagement Opportunities:**
<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-engagement-opportunities>
- **Background Presentation on Proposed Standards (Available from EPA's VIDA Stakeholder Engagement webpage):**
<https://www.epa.gov/vessels-marinas-and-ports/vessel-incident-discharge-act-vida-stakeholder-engagement-opportunities>



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