EPA DRAWS NEAR TO ISSUING NEW REGULATIONS ON COMMERCIAL VESSEL INCIDENTAL DISCHARGES

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US Policy and Regulatory Alert

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The Biden Administration has set a new path to implementing requirements for compliance with the Vessel Incidental Discharge Act (VIDA). The Office of Management and Budget is currently reviewing a new Supplemental Notice submitted from the Environmental Protection Agency (EPA) on the issue, and the agency has indicated that it anticipates a final rule by the fall of 2024.

On 4 December 2018, VIDA was signed into law. VIDA is an important piece of legislation for the maritime industry that restructures how the EPA and the US Coast Guard (USCG) regulate incidental discharges from commercial vessels. Under VIDA, the EPA is tasked with setting commercial vessel incidental discharge standards and the USCG is tasked with setting and enforcing compliance requirements. VIDA applies to several types of incidental discharges, including ballast water discharges. Once these regulations are fully in effect, they will take the place of the EPA's current Vessel General Permit (VGP). VIDA was crafted to establish greater national consistency of commercial vessel incidental discharge performance standards than the VGP, which allowed individual states to include their own more stringent requirements.

VIDA required the EPA to issue final regulations on performance standards by December 2020. On 26 October 2020, the EPA published proposed VIDA regulations in the *Federal Register* for public comment. The public response to that Notice of Proposed Rulemaking (NPRM) was overwhelming, with thousands of comments submitted, and the regulations were not finalized during the Trump Administration.

The Biden Administration now appears to be taking its own path on VIDA regulations. The EPA's regulatory agenda states that they are developing a supplemental notice (Supplemental Notice) to the 2020 NPRM. The EPA anticipates that the “Supplemental Notice will provide clarification on the proposed rule, share new ballast water data that EPA is receiving from the USCG, and discuss additional regulatory options EPA is considering for the final rule.” The Supplemental Notice was submitted to the Office of Management and Budget for review on 29 July 2023. The EPA regulatory agenda indicates that the Supplemental Notice will be issued in September and will be available for public comment.

The K&L Gates team is closely following the issuance of the Supplemental Notice in order to understand what 2020 NPRM elements the EPA proposes to change, what 2020 NPRM elements they propose to finalize, and what new requirements are being considered. The EPA expects to issue a VIDA final rule by fall of 2024, meaning that the maritime community will need to express any areas of concern or support to the EPA in a timely manner after the Supplemental Notice is published. The EPA final rule will then be followed by a USCG rulemaking process to issue enforcement regulations, for which VIDA set a deadline of two years after the EPA final rule.

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