

# UNDS *tidings*

Uniform National Discharge Standards

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## Uniform National Discharge Standards Final Rule Published

The publication of the final rule in the *Federal Register* on May 10, 1999 completes Phase I of the three-phased process to establish uniform national discharge standards (UNDS) for Armed Forces vessels. The regulation becomes effective June 9, 1999. This rule creates a new 40 CFR Part 1700 establishing uniform national discharge standards that apply to 39 discharges, other than sewage, incidental to the normal operation of vessels of the Armed Forces. Of the 39 vessel discharges, the final rule determines that 25 of the discharges require the use of marine pollution control devices (MPCDs). The final rule also determines that the remaining 14 discharges do not require control because of their low potential for causing adverse impacts on the marine environment.

### Developments Since the Proposed Rule

A 45-day public comment period followed the publication of the proposed Phase I rule in the *Federal Register*. EPA and DoD received two letters providing comments on the proposed rule. A detailed discussion of EPA and DoD's responses to the comments is provided in the document "Response to Public Comments on Proposed Uniform National Discharge Standards, Phase I," which is in the rulemaking record. The major comments are also discussed in the preamble to the final rule.

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The most significant comments, and the corresponding responses are summarized below. Following an analysis of the public comments, EPA and DoD determined that no changes were required to the Phase I rule.



#### MPCD Design

EPA and DoD received comments regarding the types of MPCDs that should be considered in setting performance standards, and what constituents the MPCDs should be designed to remove. Generally, these comments raised issues that will be addressed during the development of the Phase II rule and are beyond the scope of the Phase I rule. In UNDS Phase II, EPA and DoD will perform a more detailed assessment of the MPCD control options available for each class of vessel. Based on Phase II analyses, EPA and DoD will promulgate MPCD performance standards for the discharges requiring control.



#### Environmental Assessment Methodology

Some comments focused on whether or not the methodology to assess the discharges was appropriate. EPA and DoD believe that the analyses performed in Phase I are consistent with the requirements of CWA section 312(n) and are sufficient to identify discharges that require a MPCD to mitigate adverse impacts on the marine environment, and to determine for which discharges it is not reasonable and practicable to require a MPCD to mitigate adverse impacts on the marine environment.



#### TMDLs/ Wasteload Allocations

Two commenters raised questions about the relationship of UNDS to total maximum daily loads (TMDLs).



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One commenter suggested that States should be allowed to impose wasteload allocations on Armed Forces vessels even if this requires the vessels to install pollution control devices not identified by UNDS. However, the UNDS legislation preempts States from regulating UNDS discharges, including the establishment of wasteload allocations. In addition, the UNDS legislation revised the definition of pollutant in the CWA to exclude discharges incidental to the normal operation of a vessel of the Armed Forces (i.e., regulated by UNDS). Because the CWA provides that States establish TMDLs for "pollutants," and UNDS discharges are not pollutants, EPA and DoD interpret the CWA to mean that TMDLs may not be written for UNDS discharges.



### Exclusion of National Defense Reserve Fleet vessels from UNDS requirements

One commenter questioned why National Defense Reserve Fleet (NDRF) vessels were excluded from UNDS requirements. NDRF vessels are under the jurisdiction of the Department of Transportation (DOT). The UNDS legislation states that the only DOT vessels that are to be regulated by UNDS are those which Secretary of the DOT considers equivalent to vessels of the Armed Forces. The Secretary of the DOT has not determined NDRF vessels to be equivalent to Armed Forces vessels. Therefore, they are excluded from UNDS.

### Effect of Phase I Rule on States

The UNDS final rule also discusses the effect of the new rule on States. Specifically, the Phase I rule establishes the mechanism by which States can petition EPA and DoD to review whether or not a discharge should require control by a MPCD or to review a Federal performance standard for a MPCD. The rule also lays out the processes EPA and States follow to establish no-discharge zones (where any release of a specified discharge is prohibited).

### Phase I Outreach and Consultation

Additionally, the preamble to the final rule includes a summary of public outreach and consultation with States, Federal agencies, and environmental organizations. Other Federal agencies,

including the Coast Guard, the Department of State, and the National Oceanic and Atmospheric Administration have played an important role in the development of

You may view the *Federal Register* notice for the final Phase I rule on the Internet at [http://206.5.146.100/n45/doc/unds/Finrule/Finrule\\_idx.html](http://206.5.146.100/n45/doc/unds/Finrule/Finrule_idx.html)  
For more information on Phase II activities, see the UNDS website at <http://206.5.146.100/n45/doc/unds/unds/html>.

UNDS. Specifically, the Coast Guard has been involved in all aspects of UNDS development, while the other agencies have participated with the DoD, EPA, and Coast Guard in the UNDS Executive Steering Committee (ESC). The ESC is responsible for UNDS policy development and is composed of senior-level managers. Separately, the DoD and EPA have held discussions with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on UNDS matters.

EPA and DoD believe that the extensive Phase I outreach activities contributed to the successful promulgation of the final Phase I rule. Throughout Phase I, EPA and DoD used two approaches for involving States in UNDS development. First, a representative from the Environmental Council of the States (ECOS) is a member of the Executive Steering Committee. ECOS is the national association of State and territorial environmental commissioners and has been established, in part, to provide State positions on environmental issues to EPA. Second, representatives from the Navy (as the lead for the DoD), EPA, and the Coast Guard met with each State expressing an interest in the UNDS development.

### Next Steps

All efforts are now directed towards developing the Phase II analyses for establishing MPCD performance standards. EPA and DoD have developed a plan for conducting technical analyses to identify and select MPCD performance standards:

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- Using a discharge-by-discharge approach, as in Phase I, EPA and DoD will assess a range of potential MPCD options. These individual discharge assessments include consideration of each of the seven factors specified in the UNDS legislation: nature of the discharge, cost of a MPCD, operational impact of a MPCD, practicability of using a MPCD, environmental effects of the discharge, existing U.S. law, and international standards.
- Once the preferred control options and associated performance capabilities are determined, EPA and DoD will conduct cumulative impact analyses to determine the effectiveness of the preferred performance standards. If the preferred standards cannot meet the needs of the program, different standards may be chosen.
- If performance standards can not be established that adequately address environmental impact (i.e., no technology yet exists) of a discharge, EPA and DoD plan to establish a standard based on currently achievable controls and separately establish a target to guide research and development. This approach is consistent with the legislative intent to promote the development of innovative pollution prevention technology while implementing some level of discharge control as soon as possible.

Following the completion of the technical work, these performance standards will be proposed for public comment in the *Federal Register*. Following the resolution of the public comments, EPA and DoD will promulgate the final Phase II rule.



Would you like to be added to the UNDS *tidings* mailing list?

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### UNDS Fast Fact

In determining discharge performance standards for marine pollution control devices (MPCDs), UNDS legislation requires the DoD and EPA to consider the following factors:

1. Nature of the discharge
2. Environmental effects of the discharge
3. Practicability of using a MPCD
4. Operational impact of a MPCD on a vessel
5. Applicable United States law
6. Applicable international standards
7. Costs of MPCD installation and use

For Phase II, EPA and DoD will conduct a feasibility analysis of potential MPCD options. EPA and DoD are using the term feasibility analysis to include a quantitative assessment of the practicability and operational impacts and estimated costs of installing and operating a MPCD on Armed Forces vessels. In the feasibility analysis, EPA and DoD will consider such factors as space, volume, and weight of MPCD options; personnel safety; suitability to a marine environment; and vessel mission capabilities.

## Frequently Asked Questions

**Q:** *Between the publication of the proposed and the final Phase I rule, were any changes made to either of the two lists of discharges: discharges requiring control by a MPCD, or discharges not requiring a control by a MPCD?*

**A:** No. The lists of discharge determinations did not change from the proposed to the final Phase I rule.

**Q:** *How do EPA and DoD plan to approach the task of developing performance standards in Phase II of UNDS?*

**A:** EPA and DoD will evaluate potential MPCDs for each of the 25 discharges determined in Phase I to require control. Phase II activities include the identification of potential MPCDs, an evaluation of the feasibility and environmental effectiveness of these potential MPCDs, and finally establishing performance standards.

The performance standards promulgated may:

- Distinguish among classes, types, and sizes of vessels;
- Distinguish between new and existing vessels; and
- Provide for a waiver of the applicability of the standards as necessary or appropriate to a particular vessel class, type, age, or size.

Following the completion of the technical work, these performance standards will be proposed in the *Federal Register* for public comment. Following the resolution of the public comments, EPA and DoD will promulgate the final Phase II rule.

To learn more about UNDS, or to download current and past issues of UNDS <sup>guidings</sup> check out the UNDS homepage:

<http://206.5.146.100/n45/doc/unds/unds.html>

EPA and DoD will continue outreach to the States, other Federal agencies, and environmental organizations during Phase II.

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