

## Invitation to Comment



# Ballast Water Management & Noise Control Regulations

## **THIS DOCUMENT INCLUDES:**

- Invitation to Comment
  - Rulemaking Notice
  - Draft Rules – 2 versions – with proposed edits highlighted, and proposed edits included
- 

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

### **DEQ proposal**

DEQ proposes the following changes to OAR 340, division **143** that will:

- Require vessel operators to conduct a mid-ocean saltwater flush of empty ballast tanks prior to ballasting and subsequently de-ballasting from such tanks while in state waters, and
- Retain ballast water exchange requirements, in addition to meeting new federal ballast water discharge standards, for a subset of vessel arrivals that represent a high risk for transporting aquatic invasive species to low-salinity harbors in Oregon.

DEQ also proposes changes to OAR 340, division **35**, DEQ noise control regulations. The changes will move tables and reference documents from a source that is external to the official published version of the rules and incorporate those documents into the official published version of the rules on the Oregon Secretary of State's web page.

In 1991 the Oregon Legislature withdrew all funding for implementing and administering DEQ's noise regulations. (See OAR 340-035-0110.) DEQ therefore ended its noise control program, although the noise control regulations remain in effect. In response to budget reductions, DEQ no longer conducts a noise control program or enforces the noise control regulations. DEQ has no funding or program to respond to noise complaints, to provide advice about noise issues or to interpret the noise regulations. Local governments may choose to enforce the noise regulations.

The changes DEQ is proposing for the noise regulations are purely administrative to make it easier for the public to access information about these rules. These changes do not indicate any change in DEQ policy or practice concerning the noise regulations. DEQ still does not have a noise control program or have funding or the ability to enforce, apply or interpret the noise regulations, or to investigate noise issues or complaints.

### **More information**

Information about the rulemaking is on this rulemaking's web page:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/2015/ballast2016.aspx>

### Public Hearings

DEQ will hold the following public hearings on this rulemaking:

3-5pm, Wednesday May 18, 2016

DEQ Headquarters, 10<sup>th</sup> Floor – EQC A, 811 SW 6<sup>th</sup> Avenue, Portland, OR 97204

Conference call phone number: 877-873-8017

Conference call participant ID: 8623645

### What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

### Present proposal to the EQC

Proposed rules become effective only if the Environmental Quality Commission adopts them. DEQ plans to present the proposed rules to the commission for a decision at its meeting on August 17-18, 2016.

## How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking.

### Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on Monday May 23, 2016.

### Submit comment online through this link:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/comments/Cballast2016.aspx>

### Note for public university students:

ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

### By mail

Oregon DEQ

Attn: Rian vanden Hooff

811 SW Sixth Avenue

Portland, OR 97204-1390

### At the hearing

May 18, 2016

### Sign up for rulemaking notices

Get email updates about future DEQ rulemaking by signing up through GovDelivery:

[https://public.govdelivery.com/accounts/ORDEQ/subscriber/new?topic\\_id=ORDEQ\\_603](https://public.govdelivery.com/accounts/ORDEQ/subscriber/new?topic_id=ORDEQ_603)

or on the rulemaking web site.

### Accessibility information

You may review copies of all documents referenced in this announcement at:

## **Invitation to Comment**

Oregon Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR, 97204

To schedule a review of all websites and documents referenced in this announcement, call Rian vanden Hooff, Portland, at 503-229-6865 (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). Hearing impaired persons may call 711.



# Oregon Department of Environmental Quality

## April 15, 2016

### Notice of Proposed Rulemaking

#### Ballast Water Management 2016

## Overview

### Short summary

#### **Ballast Water Rules**

DEQ proposes the Oregon Environmental Quality Commission (EQC) approve the proposed ballast water management rule amendments. These amendments would further enhance DEQ's ability to prevent the transport and introduction of aquatic invasive species (AIS) from commercial shipping activities to state waters, thereby protecting Oregon from potentially harmful economic and environmental impacts. The proposed rule amendments are in response to recent changes in federal regulations and aim to ensure adequate AIS prevention strategies for Oregon ports.

The proposed rules establish greater protection for Oregon water resources and aquatic ecosystems in two ways. First, the rules close a management gap associated with residual ballast water and sediments in empty ballast tanks that represents a risk for introducing aquatic invasive species when vessel operators must ballast and subsequently de-ballast from empty ballast tanks while in state waters. Second, the rules address concerns that recent federal regulatory changes will replace a strategy that has proven to be highly protective for low-salinity ports (like those in Oregon) with reliance upon first generation shipboard treatment technologies that under some circumstances could be less protective of Oregon ports. Specifically, the rule would retain ballast water exchange requirements for a subset of vessel arrivals that represent a high-risk for introducing AIS to Oregon.

Under current state rules, vessel operators are no longer required to conduct ballast water exchange practices following implementation of federal discharge standards that generally require use of new shipboard treatment technology. The proposed rules would retain ballast water exchange requirements, in addition to meeting federal treatment requirements, for high-risk voyages that had sourced ballast from low-salinity environments. The EPA established a policy to retain ballast water exchange (a.k.a. 'exchange plus treatment') under the National Vessel General Permit as a strategy to protect freshwater ports from further damages by AIS, but only required this management model for voyages entering the Great Lakes. Retaining ballast exchange for high-risk voyages would serve as an important interim strategy to protect Oregon's low-salinity ports during a significant transition that depends upon the reliability of new technologies that have lacked rigorous testing. As proposed, the rule would be repealed after eight years unless DEQ and the EQC determine that technology reliability and efficacy of federal shipboard treatment policies remain inadequate. In the event that

these rules are adopted by Oregon, it is anticipated that Washington Department of Fish and Wildlife will seek to adopt comparable rules for vessels operating in the Columbia River.

The proposed rules do not involve fees, additional equipment requirements or significant administrative efforts in order to comply. Therefore, under normal operating circumstances, these rules will not have any significant negative economic impacts, either direct or indirect.

## **DEQ Noise Regulations**

This rulemaking includes a second element. As an administrative action intended to improve the clarity of its rules, DEQ has included rulemaking on a second topic in this rulemaking. This action involves DEQ's noise control regulations, found at OAR 340 division 35.

In 1991 the Oregon Legislature withdrew all funding for implementing and administering DEQ's noise regulations. (See OAR 340-035-0110.) DEQ therefore ended its noise control program, although the noise control regulations remain in effect. In response to budget reductions, DEQ no longer conducts a noise control program or enforces the noise control regulations. DEQ has no funding or program to respond to noise complaints, to provide advice about noise issues or to interpret the noise regulations. Local governments may choose to enforce the noise regulations.

The changes DEQ is proposing for the noise regulations are purely administrative to make it easier for the public to access information about these rules. These changes do not indicate any change in DEQ policy or practice concerning the noise regulations. DEQ still does not have a noise control program or have funding or the ability to enforce, apply or interpret the noise regulations, or to investigate noise issues or complaints.

The noise control regulations refer to a number of tables and external documents. Currently, those documents are not published with the official version of the rules on the Oregon Secretary of State web page. Instead, DEQ maintains those documents on its own web site.

In this rulemaking DEQ is asking the EQC to approve amendments to the noise regulations that only incorporate directly into the rules the tables and documents the rules already refer to. This will make it easier for users of these rules to find the information they need to interpret and apply the rules. It will also relieve DEQ from the cost and responsibility of maintaining these documents on its web site.

This rule change does not change any content or wording of the noise control regulations. There is no change in the meaning, effect, or application of these rules. There is also no negative fiscal impact to any person or entity from this rule change.

DEQ will therefore ask the EQC to approve these proposed amendments to the division 35 noise control regulations.

### **Brief history**

Oregon first established ballast water management regulations in 2001 to prohibit commercial vessels from discharging ballast to state waters unless the discharge meets specified management criteria. The primary ballast management practice available to mariners has been mid-ocean ballast water exchange. This strategy replaces ballast originally sourced from distant coastal and nearshore port

environments (representing a high-risk for transporting AIS) with lower-risk water sourced from the open ocean. Ballast exchange reduces the risk of transporting non-indigenous species from other freshwater ports to Oregon's freshwater ports in two important ways: by significantly reducing the number of near-shore organisms in discharged ballast (propagule pressure) and by causing high mortality to any remaining freshwater or brackish organisms in the tanks via osmotic shock. In addition to other management options, such as retaining ballast while in port or using a municipal water supply, using a U.S. Coast Guard (USCG) approved shipboard ballast water treatment system is also identified as an acceptable management method. However, until recently, technology was still in development and the USCG had not established numerical standards or technology certification criteria to guide implementation of treatment-based strategies. In recent years Oregon has been closely monitoring the development of ballast discharge standards at state, federal and international levels to determine whether state-specific discharge standards are necessary, or whether the adoption of federal standards is adequately protective of Oregon waters.

In 2009, the Oregon Legislature clarified authority for the EQC to adopt by rule standards and procedures to minimize the risk of introducing AIS from ballast discharged to state waters (HB 2714). Moreover, the Legislature created the Shipping Transport of Aquatic Invasive Species Task Force (STAIS). STAIS represents a range of stakeholders and makes recommendations to the state on matters related to ballast water management for commercial vessels transiting Oregon waters.

Based on developments at the international and federal level, STAIS recommended in 2010 that Oregon wait for final determination of federal ballast water discharge standards before deciding whether state specific discharge standards are necessary. At that time, federal authorities were considering whether to adopt standards for the numerical limits on living organisms in discharged ballast comparable to those California established in 2007 or the considerably less protective standards established by the International Maritime Organization's (IMO) 2004 Ballast Water Management Convention.

The 2012 USCG final rule on ballast water management established numeric standards for discharging living organisms in ballast discharge by adopting the less protective standards established by the IMO. The United States Environmental Protection Agency (EPA) also adopted the less protective IMO standards within the 2013 NPDES Vessel General Permit, however, the U.S. 2<sup>nd</sup> Circuit Court of Appeals ruled in October 2015 that the EPA's reliance on the IMO/USCG standard was arbitrary and capricious.

Of particular interest to Oregon, the EPA noted in issuing the 2013 Vessel General Permit that relying upon first generation shipboard treatment systems certified to meet the IMO/USCG standard may not represent an improvement over ballast water exchange for protecting freshwater ports from further aquatic invasive species damages. Rather, for voyages that source ballast from low-salinity environments, replacing ballast water exchange with shipboard treatment systems could increase the chance of transporting and releasing non-indigenous species that represent a high-risk for invasion to freshwater ecosystems.

To achieve an adequate protection level, the EPA proposed retaining ballast exchange requirements, in addition to imposing the new ballast treatment standards, for ocean-going vessels that enter the Great Lakes/St. Lawrence system with low-salinity water in their ballast tanks. Based upon similar concerns, DEQ submitted comments to EPA strongly encouraging the adoption of 'exchange plus treatment' for all freshwater harbors in the U.S, and in particular the low-salinity ports in Oregon.

Unfortunately, the EPA issued the final permit with ‘exchange plus treatment’ requirements only for vessels operating in the Great Lakes. As a result of the implementation of these federal policies, USCG certified shipboard treatment systems can now be used in place of ballast water exchange to meet ballast water management requirements under OAR 340-143-0050.

In response to the federally mandated changes in ballast water management, the states of Maine, Rhode Island, New York, Minnesota and Michigan established 401 certification conditions to the 2013 EPA Vessel General Permit that require all vessels to retain ballast water exchange in addition to meeting federal discharge standards, regardless of ballast water origin salinity levels. Also, Canadian authorities announced the intention of adopting the IMO D-2 discharge standards, but with a more stringent provision that retains ballast water exchange practices for vessels discharging ballast to low-salinity harbors, including those of the Pacific Coast, such as the Fraser River.

In response to the recent changes, the DEQ has been working with the STAIS task force to evaluate efficacy of the federal discharge standards for protecting Oregon waters. Task force stakeholders sought consensus recommendations based on regional consistency with neighboring states, compatibility with federal regulations, and goals for preventing vessel-mediated AIS introductions to Oregon.

#### Regulated parties

##### **Ballast Water**

The proposed amendments to OAR 340-143 do not change the regulated parties.

##### **Noise Regulations**

The noise control regulations apply to a wide range of parties that generate noise. However the proposed amendments do not change the regulated parties or the compliance requirements in any way.

#### Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules’ substantive goals while reducing any potential negative economic impact on business resulting from the rules.

## Statement of need

### Management of Empty Ballast Tanks

What need would the proposed rule address?

The need to reduce the invasive species transfer risk associated with residual ballast water and sediments in ‘empty’ ballast tanks that may be used for ballasting and subsequent de-ballasting while in state waters.

How would the proposed rule address the need?

The proposed rule requires vessel operators to conduct a mid-ocean saltwater flush of empty ballast tanks that they want to use for ballasting and subsequent de-ballasting while in port.

How will DEQ know the rule addressed the need?

Mid-ocean saltwater flushing of an empty ballast tank will result in residual water salinity of at least 30 parts per thousand and thereby will significantly reduce the probability for introducing high-risk species to the low-salinity environments of Oregon ports. This minimum salinity criterion can be used for compliance verification purposes.

### Retaining Ballast Water Exchange

What need would the proposed rule address?

There are concerns that new management practices established by federal requirements could, under some circumstances, represent a lower efficacy for preventing aquatic invasive species (AIS) transport to low-salinity ports in Oregon than current mid-ocean ballast exchange management practices.

How would the proposed rule address the need?

The rules retain ballast water exchange requirements for a subset of vessel arrivals to Oregon that represent a high risk for transporting AIS.

How will DEQ know the rule addressed the need?

Vessel inspections by DEQ staff, including sampling of ballast tank water for a minimum salinity, provides opportunity to verify compliance with elements of the proposed rule, as well as other ballast management criteria. The ballast water program at DEQ currently has the capacity to inspect approximately 15% of vessel arrivals to Oregon. Inspections are prioritized for vessel arrivals that represent a higher risk for transporting AIS to Oregon waters, such as the vessel arrivals that would be subject to the proposed rule. Compliance verification sampling of vessels subject to the rule, combined with ongoing evaluation of ballast water treatment system efficacy and monitoring for new



non-indigenous species in Oregon waters, will inform DEQ's evaluation of the new rule and a determination of whether it is needed beyond the proposed expiration date in 2025.

## **Noise Tables**

What need would the proposed rule address?

The rules are currently difficult for users to read, interpret and apply because the necessary information contained in tables and reference documents is not published in the same location as the rules.

How would the proposed rule address the need?

The amendments move tables and reference documents from a source that is external to the official published version of the rules and incorporates those documents into the official published version of the rules.

How will DEQ know the rule addressed the need?

The external documents will have been incorporated into the official published version of DEQ's rules.

## Rules affected, authorities, supporting documents

### Ballast Water Rules

Lead division

Operations Division

Program or activity

Ballast Water Management

Chapter 340 action

Amend OAR 340-143-0005, 340-143-0010, 340-143-0050

Statutory authority

ORS 468.020, 783.620 – 783.640

Statute implemented

ORS 783.620 – 783.640

Legislation

House Bill 2207 (2015)

Other authority

Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA - Section 1205)  
(codified as 16 U.S.C. § 4725)

Documents relied on for rulemaking

Document title	Document location
Oregon Task Force on Shipping Transport of Aquatic Invasive Species – Report to the 2015 Legislature	<a href="http://www.deq.state.or.us/lq/cu/emergency/staistaskforce.htm">http://www.deq.state.or.us/lq/cu/emergency/staistaskforce.htm</a>
EPA VGP 2013	<a href="http://www.epa.gov/npdes/vessels-incident-discharge-permitting-3">http://www.epa.gov/npdes/vessels-incident-discharge-permitting-3</a>
Transport Canada Policy Implementation Paper 2012	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Briski, E., Gollasch, S., David, M., Linley, R. D., Casas-Monroy, O., Rajakaruna, H., & Bailey, S. A. (2015). Combining ballast water exchange and treatment to maximize prevention of species introductions to freshwater ecosystems. <i>Environmental science &amp; technology</i> , 49(16), 9566-9573.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>

Bailey, S. A., Deneau, M. G., Jean, L., Wiley, C. J., Leung, B., & MacIsaac, H. J. (2011). Evaluating efficacy of an environmental policy to prevent biological invasions. <i>Environmental Science &amp; Technology</i> , 45(7), 2554-2561.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Briski, E., Allinger, L. E., Balcer, M., Cangelosi, A., Fanberg, L., Markee, T. P. & Regan, D. H. (2013). Multidimensional approach to invasive species prevention. <i>Environmental science &amp; technology</i> , 47(3), 1216-1221.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Gray, D. K., Johengen, T. H., Reid, D. F., & MacIsaac, H. J. (2007). Efficacy of open-ocean ballast water exchange as a means of preventing invertebrate invasions between freshwater ports. <i>Limnology and Oceanography</i> , 52(6), 2386-2397.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Bradie, J. N., Bailey, S. A., Van Der Velde, G., & MacIsaac, H. J. (2010). Brine-induced mortality of non-indigenous invertebrates in residual ballast water. <i>Marine Environmental Research</i> , 70(5), 395-401.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Gollasch, S., David, M., Voigt, M., Dragsund, E., Hewitt, C., & Fukuyo, Y. (2007). Critical review of the IMO international convention on the management of ships' ballast water and sediments. <i>Harmful algae</i> , 6(4), 585-600.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Ruiz, G.M., & Reid, D.L. (2007). Current State of Understanding about the Effectiveness of Ballast Water Exchange (BWE) in Reducing Aquatic Nonindigenous Species (ANS) Introductions to the Great Lakes Basin and Chesapeake. NOAA Technical Memorandum GLERL-142.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>
Simkanin, C., Davidson, I., Falkner, M., Sytsma, M., & Ruiz, G. (2009). Intra-coastal ballast water flux and the potential for secondary spread of non-native species on the US West Coast. <i>Marine Pollution Bulletin</i> , 58(3), 366-374.	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx</a>

## Noise Control Regulations

Lead division

Operations Division

Program or activity

Rulemaking

Chapter 340 action

Amend OAR 340-035-0015, 340-035-0025, 340-035-0030, 340-035-0035, 340-035-0040  
340-035-0045

Statutory authority

ORS 467

Statute implemented

ORS 467, 467.030,

Documents relied on for rulemaking

None.

## Fee Analysis

---

This rulemaking does not involve fees.

## Statement of fiscal and economic impact

### Fiscal and Economic Impact

#### **Ballast Water Rules**

This rulemaking amends invasive species prevention practices required of commercial vessels greater than 300 gross tons that intend to discharge ballast water while operating in state waters. Large foreign businesses own and operate the vast majority of affected vessels. The proposed rules do not involve a significant cost of compliance for these foreign businesses and are not expected to have any indirect effects on local businesses that depend on maritime commerce. As proposed, the rules affecting management of empty ballast tanks (340-143-0010) are in essence the same as preexisting federal requirements. And the ‘exchange plus treatment’ requirement is specifically tailored to only target high-risk voyages carrying low salinity ballast water – less than 11% of all vessel arrivals according to DEQ estimates.

#### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ’s noise regulations and therefore has no fiscal impact on any person or entity.

### Statement of Cost of Compliance

#### **State and federal agencies**

##### **Ballast Water Rules**

This rulemaking will not require additional resources for the Department of Environmental Quality, nor other state or federal agencies.

##### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ’s noise regulations and therefore has no fiscal impact on any person or entity.

#### **Local governments**

##### **Ballast Water Rules**

These rules would not impose a negative economic impact on local governments. Rather, these rules are intended to protect the general public by preventing the introduction of aquatic invasive species which have caused devastating economic impacts for public and private sector entities in other regions of the country.

##### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

## **Public**

### **Ballast Water Rules**

These rules would not impose a negative economic impact on the general public. Rather, these rules are intended to protect the general public by preventing the introduction of aquatic invasive species, which have caused devastating economic impacts for public and private sector entities in other regions of the country.

### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

## **Large businesses - businesses with more than 50 employees**

### **Ballast Water Rules**

DEQ does not anticipate any significant economic impact for large businesses operating in Oregon as a result of the proposed rules. The proposed rules do not impose fees or require the use or installation of new equipment or management practices for regulated vessels. For those vessel operators that the proposed rule revisions affect, cost of compliance may involve a minor increase in operational costs of shipboard treatment systems if a bypass option is not available for initial uptake of ballast water, prior to conducting mid-ocean ballast exchange.

### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

## **Small businesses – businesses with 50 or fewer employees**

### **Ballast Water Rules**

DEQ does not anticipate any significant economic impact as a result of the proposed rules. DEQ's state ballast water management regulations establish a minimum vessel size criteria of less than 300 gross tons with ballast tanks and exemptions for commercial fishing vessels so that no small businesses are subject to these rules. Moreover, the proposed rules do not establish fees or require new operational practices to manage ballast water. Therefore, under normal operational conditions, the rules would not impose significant economic impacts, either directly or indirectly, on any small businesses.

### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.	This rulemaking has no fiscal impact on small businesses.
b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.	N/A
c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.	N/A
d. Describe how DEQ involved small businesses in developing this proposed rule.	N/A

How DEQ involved small businesses in developing this rule

#### **Ballast Water Rules**

Large companies headquartered outside of Oregon own greater than 95% of the vessels ORS 783.620 through 783.640 regulate. There are a limited number of local businesses that operate regulated vessels, and those that do (ocean going tug and barge operations) have more than 50 employees. To incorporate a broader perspective on potential economic impacts to other non-regulated businesses, DEQ relied on advisory committee members representing the general maritime industry for Oregon ports. This included representatives from the Port of Portland, the Columbia River Steamship Operators Association, Sause Brothers Ocean Towing, and the Western States Petroleum Association.

#### **Noise Table Rules**

This rulemaking makes no wording or substantive change to DEQ's noise regulations and therefore has no fiscal impact on any person or entity.

Documents relied on for fiscal and economic impact

None.

Advisory committee

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant impact on small businesses and complies with ORS 183.540.



The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved minutes dated 29 February 2016.

The committee did not provide or request additional data to support or refute DEQ's finding of no significant direct or indirect economic impacts. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

#### Housing cost

##### **Ballast Water Rules**

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the rules only affect commercial vessels discharging ballast water that had been sourced from outside state water and the changes to regulations do not impose significant changes in operational costs or investment.

##### **Noise Table Rules**

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on the development costs because the changes to the noise rules are administrative only and have no substantive effect.

## Federal relationship

### Ballast Water Rules

#### Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

To address risks associated with empty ballast tanks, the proposed rules (OAR 340-143-0010) adopt management requirements that are substantively equivalent to federal requirements established under section 2.2.3.6.3 of the 2013 EPA NPDES Vessel General Permit. Adopting these requirements under Oregon law would facilitate compliance verification inspections and enforcement by DEQ staff. These are functions that EPA generally does not have current capacity for conducting for vessel arrivals to Oregon waters.

Proposed rules to retain ballast water exchange practices for a subset of high-risk vessel arrivals (340-143-0050) would add requirements additional to those in federal requirements for vessels calling on Oregon waters. Instead of being able to forego ballast water exchange practices once a vessel is equipped with a federally approved shipboard treatment system, vessels undertaking high-risk voyages would be required to carry out ballast exchange, in addition to meeting numeric discharge standards. The rules are substantively equivalent, however, to federal requirements established under section 2.2.3.7 of the 2013 EPA NPDES Vessel General Permit. That provision requires vessels entering the Great Lakes to retain ballast water exchange practices.

#### What alternatives did DEQ consider if any?

In addition to a ‘no-action’ alternative, DEQ also considered adopting a state specific ballast water discharge standard that is more protective than what has been established by federal regulations. For example, California’s ballast water discharge standard is roughly 100x more stringent than the federal standard.

In dealing with regulated parties that are mobile entities operating in many jurisdictions, there are many challenges associated with adopting a state-specific discharge standard that is more protective than a federal standard. Besides determination of technology availability to meet the higher standard, it would also likely involve additional equipment investments for vessel operators beyond the federal requirement.

In contrast, the proposed rule is compatible within the framework of implementing federal discharge standards but does not require any additional equipment or technological investments. Rather, it simply requires that under some voyage conditions, vessel operators are required to conduct ballast exchange, the same management practice that has been required for the past 15 years, in addition to meeting the new federal discharge standards.

In order to adequately protect Oregon waterways from aquatic invasive species introductions, the proposed rules were modeled after the existing regulations that EPA developed for protecting the Great Lakes. Scientific studies have shown that the ‘exchange plus treatment’ strategy is highly effective at protecting freshwater ports from the economic, ecological and human health threats that

can be associated with aquatic invasive species. DEQ, in consultation with stakeholders, determined that the strategy adopted for protecting the Great Lakes, and similarly adopted by states of MI, MN, MA, NY, and RI, will be a sufficiently protective strategy for the predominantly low-salinity ports of Oregon.

In the absence of additional prevention strategies targeting high-risk voyages, studies suggest that the new technology based strategies required under federal regulations could, under some circumstances, represent an increased threat for aquatic invasive species compared to ballast water exchange. Therefore, DEQ rejected the ‘no-action’ alternative.

## **Noise Regulations**

Relationship to federal requirements

The proposed amendments make no substantive changes to the rules and therefore do not conflict with or duplicate federal requirements.

What alternatives did DEQ consider if any?

DEQ did not consider any alternatives because the proposed amendments do not make any substantive changes to the rules.

## Land use

### Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
  - Resources, objectives or areas identified in the statewide planning goals, or
  - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<b>Goal</b>	<b>Title</b>
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

### Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

## Stakeholder and public involvement

### Advisory committee

#### Background

DEQ convened the Ballast Water Rulemaking 2016 advisory committee. The committee included representatives from local and regional maritime industry entities, advocacy groups, research institutions, and state, regional and federal agencies. The committee met three times between December and March 2016. The committee's web page is located at:

<http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx>

The committee members were:

Name	Representing
Mark Sytsma, Chair	Portland State University
Jas Adams	Willamette University, State Marine Board
Michelle Hollis	Port of Portland
Frank Holmes	Western States Petroleum Association
Ross McDonald	Sause Bros
Hans Meere	EGT, LLC
Fred Myer	Port of Portland
Amanda Hanson	Lower Columbia River Estuary Partnership
Kate Mickelson	Columbia River Steamship Operators Association
Dick Vander Schaaf	The Nature Conservancy
Travis Williams	Willamette Riverkeeper
Rick Boatner	OR Dept. Fish and Wildlife
Nicole Dobroski	CA State Lands Commission
Robyn Draheim	U.S. Fish and Wildlife Service
Michael Pearson	U.S. Coast Guard
Allen Pleus	WA Dept. Fish and Wildlife

## Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  - On 10/5/16 and 1/12/16 DEQ sent a one-time notice to members of the Shipping Transport of Aquatic Invasive Species Task Force subscribers to describe how to sign up for advisory committee meeting notices, and
  - People who signed up for the advisory committee bulletin.
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).
- On 1/13/16 and 2/17/16 DEQ provided news release statements announcing advisory committee meeting details
- On 1/13/16 and 2/17/16 DEQ provided notice of meetings and links to committee information through postings on Facebook and Twitter.

## Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee devoted a significant proportion of its discussion time to the ballast exchange plus treatment proposal. The committee played an instrumental role in identifying a solution that is practicable within the broad framework of global shipping but also locally tailored to address targeted threats to local resources. Specifically, the committee guided the determination to adopt an 'exchange plus treatment' model based off of the EPA Vessel General Permit for the Great Lakes, rather than more stringent models that have been adopted or proposed in other jurisdictions. Generally, committee members representing maritime industry interests believed that the 'exchange plus treatment' strategy proposed here only needs to be required of voyages representing a high-risk for introducing AIS to Oregon waters which is approximately 10.7% of arrivals. This strategy does not need to be applied to all vessel operators discharging ballast. Some other jurisdictions have adopted this strategy.

Although regional consistency is an important guiding objective for most advisory committee members, the committee was recognized that the predominance of low-salinity ports in Oregon compared to neighboring states provides greater incentive for our state to take the initiative to establish this management requirement. Both Washington, for the Columbia River, and California, for the Sacramento River, have suggested that they will be looking to adopt rules that are substantively comparable to what is being proposed by Oregon DEQ.

Moreover, the committee's participation was important in developing detailed exemptions that will make the regulations more adaptable to rapidly evolving shipboard treatment technologies. Meeting minutes and recordings are available from the advisory committee webpage at: <http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ballast2016.aspx>

## EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director's Report.

DEQ did not present additional information specific to this proposed rule revision.

## Public notice and hearings

### Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on April 15, 2016, by:

- Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on May 1, 2016
- Notifying the EPA by email
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking; located at:  
<http://www.oregon.gov/deq/RulesandRegulations/Pages/2015/ballast2016.aspx>
- Emailing interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - Ballast Water Management
- Emailing the following key legislators required under ORS 183.335:
  - Senator Roblan, Legislative Advisor to the STAIS Task Force
  - Representative McKeown, Legislative Advisor to the STAIS Task Force
  - Senator Edwards, Chair, Environment & Natural Resource Committee
  - Representative Witt, Chair, Agriculture and Natural Resources Committee
- Emailing members of the Task Force on Shipping Transport of Aquatic Invasive Species
- Emailing advisory committee members
- Emailing 75 interested parties on the Pacific Ballast Work Group distribution list
- Postings on Twitter and Facebook
- Posting on the DEQ event calendar: [DEQ Calendar](#)
- Posting on the DEQ Public Notices web page: [DEQ Notices](#)

### Public hearings

DEQ plans to hold one public hearing. The information is listed below.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

### Hearing Information

May 18, 2016  
3 – 5 pm  
DEQ Headquarters  
811 SW 6<sup>th</sup> Ave., Room EQCA  
Portland, OR 97204

Presiding Officer – To be determined

## Teleconference Procedure

- Call: 877-873-8017
- When prompted, use ID code: 8623645

## Close of public comment period

The comment period will close 4 p.m. on 25 May, 2016.

## Accessibility Information

You may review copies of all documents referenced in this announcement at:  
Oregon Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR, 97204

To schedule a review of all websites and documents referenced in this announcement, call Rian vanden Hooff, Portland, OR, 503-229-6865. (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us). Hearing impaired persons may call 711.



Inserted text is BLUE AND UNDERLINED  
Deleted text is ~~RED AND STRIKETHROUGH~~

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### DIVISION 143

#### BALLAST WATER MANAGEMENT

**340-143-0005**

##### Definitions

- (1) "Ballast Water" means any water and associated sediment used to manipulate the trim and stability of a vessel.
- (2) "Cargo Vessel" means a ship in commerce, other than a tank vessel or a vessel used solely for commercial fish harvesting, of 300 gross tons or more.
- (3) "Coastal Ocean Exchange" means the exchange of ballast water in an area no less than 50 nautical miles from any shore and where the water depth exceeds 200 meters.
- (4) "Common Waters Zone" means the Pacific Coast of North America between 40 and 50 degrees north latitude.
- (5) "DEQ" means the Oregon Department of Environmental Quality.
- (6) "Empty ballast tank" means a ballast tank of a vessel that has been discharged of ballast water from a voyage and , as a result, is expected to have only unpumpable residual ballast water and sediment remaining in the ballast tank.
- (~~6~~7) "Exchange" means to replace the water in a ballast tank using either flow-through exchange, empty/refill exchange, or other exchange methods ~~recommended or required~~ described under U.S. Coast Guard rules, 33 CFR, part 151.2035.
- (~~7~~8) "Exclusive Economic Zone" extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.
- (~~8~~9) "High-risk Ballast Water" means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.
- (~~9~~10) "Internal Waters of the State" means those waters of this state that do not have shared jurisdiction with an adjacent state.

(11) "Nonindigenous Species" means any species or other viable biological material entering an ecosystem beyond its natural range. This also includes seeds, eggs, spores and other biological material entering an ecosystem beyond its natural range.

(12) "Oil" means oil, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and any other petroleum-related product.

(13) "Open Sea Exchange" means the exchange of ballast water that occurs in an area no less than 200 nautical miles from any shore and where the water depth exceeds 2,000 meters.

(14) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.

(15) "Passenger Vessel" means a ship of 300 gross tons or more, carrying passengers for compensation.

(16) "Port" means any place to which a vessel is bound to anchor or moor.

(17) "Saltwater flush" means to pump a sufficient volume of coastal ocean or open sea water, depending upon prior ballast source location, into an empty ballast tank and subsequently discharge the ballast water such that the remaining residual ballast water and sediment has a salinity greater than or equal to 30 parts per thousand.

(16) "Sediment" means any matter that settles out of ballast water.

(17) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(18) "Tank Vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue other than:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(19) "Territorial Sea of the United States" means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

(20) "Vessel" means a tank vessel, cargo vessel or passenger vessel.

(21) "Voyage" means any transit by a vessel destined for any Oregon port.

(22) "Waters of the State" mean natural waterways including all tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in

Oregon, navigable and non-navigable, including that portion of the Pacific Ocean that is within Oregon's boundaries.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

### 340-143-0010

#### Ballast Water Management: Discharge Prohibitions

(1) Vessels may not ~~Dd~~ discharge ~~of~~ ballast water containing oil or hazardous material into waters of the state ~~is prohibited~~.

(2) Vessels may ~~carrying ballast water into waters of the state must~~ not discharge ballast water into waters of the state unless:

(a) The vessel discharges ballast water only at the same location where the ballast water originated, provided that the master, operator or person in charge of the vessel can demonstrate compliance with Section (3) of this rule or that the ballast water to be discharged was not mixed with ballast water or sediment from an area other than mid-ocean waters. For purposes of this subsection, "same location" means an area within one nautical mile of the berth or within the recognized breakwater of an Oregon port or place, at which the ballast water to be discharged was loaded;

(b) The owner or operator of the vessel conducted proper ballast water exchange management practices before entering waters of the state, such that:

(A) The vessel conducted Aa an open sea exchange ~~was conducted~~ for ballast tanks containing water sourced outside the Exclusive Economic Zone; or

(B) The vessel conducted Aa coastal ocean exchange ~~was conducted~~ for ballast tanks containing water sourced from a port within the ~~North American~~ Pacific Coast Region of North America;

(c) The vessel obtained T the ballast water ~~was solely obtained~~ from mid-ocean waters that are no less than 200 nautical miles from any shore and where water depth exceeds 2,000 meters;

(d) The ballast water originated solely from the common waters zone, as defined by OAR 340-143-0005(5);

(e) The ballast water originated solely from municipal or treated drinking water sources and is not mixed with ballast water obtained from areas other than open sea waters;

(f) The ballast water had been ~~treated in a manner authorized by~~ managed using a shipboard treatment system that meets the certification and discharge standards in OAR 340-143-0050; or

(g) The vessel owner or operator ~~has declares-declared~~ a safety exemption ~~in a manner consistent with~~ ~~ORS 783.635 (2)(b) and~~ OAR 340-143-0040(2) specifies.

(3) Empty ballast tanks that contain unpumpable residual ballast water or sediment may only be used for ballasting and subsequent deballasting within waters of the state if the residual ballast water has salinity greater than or equal to 30 parts per thousand at the time of entering state waters. For voyages that have recently sourced ballast from low-salinity waters or are otherwise unable to verify the salinity of the residual ballast water or sediments prior to entering state waters, the vessel operator shall conduct a saltwater flush of empty tank(s):

(a) At least 200 nautical miles from any shore for tank(s) containing water sourced outside the Exclusive Economic Zone; or

(b) At least 50 nautical miles from shore and in waters at least 200 meters deep for tank(s) containing water sourced within the Pacific Coast Region of North America.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

### **340-143-0050**

#### **Ballast Water Management: Use of Shipboard Ballast Water Treatment Systems**

~~(1) Discharge Standards. Reserved~~

~~(21)~~ Use of shipboard ballast water treatment systems. Ballast water treated using technology approved for shipboard use by the U.S. Coast Guard and in compliance with federal discharge standards ~~or treated using technology approved for shipboard use~~ established by the ~~U.S. Coast Guard or the~~ U.S. Environmental Protection Agency may be discharged to waters of the state but may also be subject to additional management practice requirements established under section (2) of this -rule ~~unless discharge violates section (1).~~

(2) Ballast exchange plus treatment. For vessels managing ballast water with a shipboard treatment system under federal discharge standards, the vessel operator shall also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand. Prior to treatment, vessel operators shall conduct ballast exchange or saltwater flushing practices as OAR 340-143-0010(2)(b), and 340-143-0010 (3) specify, respectively, resulting in salinity greater than or equal to 30 parts per thousand. The ballast water exchange requirement under this section does not apply if:

(a) The vessel is equipped with a ballast water treatment system meeting a ballast discharge standard more stringent than the International Maritime Organization D-2 standards established under the 2004 Ballast Water Management Convention, such that discharged ballast contains:

(A) Less than 1 living organism per 10 cubic meters that is 50 or more micrometers in minimum dimension;

(B) Less than 1 living organism per 10 milliliters that is less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

(C) Concentrations of indicator microbes that are less than:

(i) One colony-forming unit of toxicogenic Vibrio cholera (serotypes 01 and 0139) per 100 milliliters or less than one colony-forming unit of that microbe per gram of wet weight of zoological samples;

(ii) 126 colony-forming units of Escherichia coli per 100 milliliters; and

(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters.

(b) The ballast water discharge qualifies for an exemption set forth in OAR 340-143-0010(2)(a), OAR 340-143-0010(2)(c), OAR 340-143-0010(2)(d), or OAR 340-143-0010(2)(e), or

(c) The vessel owner or operator determines that compliance with the ballast water exchange requirement meets safety exemption conditions set forth in OAR 340-143-0040(2).

(3) As an alternative to discharging high-risk ballast water identified in 340-143-0040, DEQ may authorize, by order in writing, ~~the use of~~ using ballast water treatment systems identified as promising technology by the U.S. EPA, U.S. Coast Guard or neighboring states.

(4) DEQ shall repeal section (2) of this rule effective January 1, 2025. Prior to this date, DEQ, in consultation with a stakeholder advisory group, will review current science on the efficacy of federal ballast water discharge standards and shipboard treatment systems for preventing introductions of aquatic invasive species to Oregon waters. The review may provide recommendations including, but not limited to, an extended repeal date of this rule, if necessary.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### DIVISION 35

#### NOISE CONTROL REGULATIONS

**NOTE:** Some of these rules refer to documents titled “NPCS.” These are noise manuals. As they are too large to incorporate into the text of the rules, they are provided as attachments to this document.

#### General

##### 340-035-0005

#### Policy

In the interest of public health and welfare, and in accordance with ORS 467.010, it is declared to be the public policy of the State of Oregon:

- (1) To provide a coordinated state-wide program of noise control to protect the health, safety, and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions;
- (2) To facilitate cooperation among units of state and local governments in establishing and supporting noise control programs consistent with the state program and to encourage the enforcement of viable local noise control regulations by the appropriate local jurisdiction;
- (3) To develop a program for the control of excessive noise sources which shall be undertaken in a progressive manner, and each of its objectives shall be accomplished by cooperation among all parties concerned.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.010

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74

##### 340-035-0010

#### Exceptions

- (1) Upon written request from the owner or controller of a noise source, the Department may authorize exceptions as specifically listed in these rules.
- (2) In establishing exceptions, the Department shall consider the protection of health, safety, and welfare of Oregon citizens as well as the feasibility and cost of noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints. For those exceptions which it authorizes the Department shall specify the times

during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74

### **340-035-0015**

#### **Definitions**

As used in this division:

(1) "Air Carrier Airport" means any airport that serves air carriers holding Certificates of Public Convenience and Necessity issued by the Civil Aeronautic Board.

(2) "Airport Master Plan" means any long-term development plan for the airport established by the airport proprietor.

(3) "Airport Noise Abatement Program" means a Commission-approved program designed to achieve noise compatibility between an airport and its environs.

(4) "Airport Proprietor" means the person who holds title to an airport.

(5) "Ambient Noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

(6) "Annual Average Day-Night Airport Noise Level" means the average, on an energy basis, of the daily Day-Night Airport Noise Level over a 12-month period.

(7) "Any One Hour" means any period of 60 consecutive minutes during the 24-hour day.

(8) "Closed Course Motorcycle Racing Vehicle" means any motorcycle racing vehicle that is operated in competition or practice session on a closed course motor sports facility, i.e., where public access is restricted and admission is generally charged.

(9) "Commission" means the Environmental Quality Commission.

(10) "Construction" shall mean building or demolition work and shall include all activities thereto such as clearing of land, earthmoving, and landscaping, but shall not include the production of construction materials.

(11) "Day-Night Airport Noise Level (Ldn)" means the Equivalent Noise Level produced by airport/aircraft operations during a 24-hour time period, with a 10 decibel penalty applied to the level measured during the nighttime hours of 10 p.m. to 7 a.m.

(12) "Department" means the Department of Environmental Quality.

(13) "Director" means the Director of the Department.

(14) "Drag Racing Vehicle" means any racing vehicle used to compete in any acceleration competition initiated from a standing start and continued over a straight line course.

(15) "Emergency Equipment" means noise emitting devices required to avoid or reduce the severity of accidents. Such equipment includes, but is not limited to, safety valves and other unregulated pressure relief devices.

(16) "Equivalent Noise Level (Leq)" means the equivalent steady state sound level in A-weighted decibels for a stated period of time which contains the same acoustic energy as the actual time-varying sound level for the same period of time.

(17) "Existing Industrial or Commercial Noise Source" means any industrial or commercial noise source for which installation or construction was commenced prior to January 1, 1975.

(18) "Farm Tractor" means any motor vehicle designed primarily for use in agricultural operations for drawing or operating plows, mowing machines, or other implements of husbandry.

(19) "Four Wheel Drive Racing Vehicle" means any four-wheeled racing vehicle with at least one wheel on the front and rear axle driven by the engine or any racing vehicle participating in an event with predominantly four wheel drive racing vehicles.

(20) "Go-Kart Racing Vehicle" means a light-weight four-wheeled racing vehicle of the type commonly known as a go-kart.

(21) "Impulse Sound" means either a single pressure peak or a single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound pressure measuring instrument or "C" weighted, slow response instrument and specified by dB and dBC respectively.

(22) "In-Use Motor Vehicle" means any motor vehicle which is not a new motor vehicle.

(23) "Industrial or Commercial Noise Source" means that source of noise which generates industrial or commercial noise levels.

(24) "Industrial or Commercial Noise Levels" means those noises generated by a combination of equipment, facilities, operations, or activities employed in the production, storage, handling, sale, purchase, exchange, or maintenance of a product, commodity, or service and those noise levels generated in the storage or disposal of waste products.



(25) "Motorboat" as used in OAR 340-035-0025 means a watercraft propelled by an internal combustion engine but does not include a boat powered by an outboard motor or an inboard/outboard power package designed to exhaust beneath the surface of the water.

(26) "Motorcycle" means any motor vehicle, except farm tractors, designed to travel on not more than three wheels which are in contact with the ground.

(27) "Motor Sports Advisory Committee" means a committee appointed by the Director, from among the nominees, for the purpose of technical advice on racing activities and to recommend Exceptions to these rules as specified in OAR 340-035-0040(12). This Committee shall consist of:

(a) One permanent public member nominated by a noise impacted group or association; and

(b) One representative of each of the racing vehicle types identified in OAR 340-035-0040(2) as nominated by the respective sanctioning bodies; and

(c) The program manager of the Department's noise pollution control section who shall also serve as the departmental staff liaison to this body; and

(d) An attorney; and

(e) An acoustical engineer.

(28) "Motor Sports Facility" means any facility, track or course upon which racing events are conducted.

(29) "Motor Sports Facility Noise Impact Boundaries" means the daily 55 dBA day-night (Ldn) noise contours around the motor sports facility representing events that may occur on the day of maximum projected use.

(30) "Motor Sports Facility Owner" means the owner or operator of a motor sports facility or an agent or designee of the owner or operator. When a Racing Event is held on public land, the event organizer (i.e., promoter) shall be considered the motor sports facility owner for the purposes of these rules.

(31) "Motor Vehicle" means any vehicle which is, or is designed to be self-propelled or is designed or used for transporting persons or property. This definition excludes airplanes, but includes watercraft.

(32) "New Airport" means any airport for which installation, construction, or expansion of a runway commenced after January 1, 1980.

(33) "New Industrial or Commercial Noise Source" means any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the industrial or commercial noise source in question.

(34) "New Motor Sports Facility" is any permanent motor sports facility for which construction or installation was commenced after January 1, 1982. Any recreational park or similar facility which initiates sanctioned racing after this date shall be considered a new motor sports facility.

(35) "New Motor Vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the new motor vehicle for purposes other than resale. The model year of such vehicle shall be the year so specified by the manufacturer, or if not so specified, the calendar year in which the new motor vehicle was manufactured.

(36) "Noise Impact Boundary" means a contour around the airport, any point on which is equal to the airport noise criterion.

(37) "Noise Level" means weighted sound pressure level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA.

(38) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.

(39) "Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified octave band. The reference pressure is 20 micropascals (20 micronewtons per square meter).

(40) "Off-Road Recreational Vehicle" means any motor vehicle, including water craft, used off public roads for recreational purposes. When a road vehicle is operated off-road the vehicle shall be considered an off-road recreational vehicle if it is being operated for recreational purposes.

(41) "One-Third Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified one-third octave band at the preferred frequencies. The reference pressure is 20 micropascals (20 micronewtons per square meter).

(42) "Open Course Motorcycle Racing Vehicle" means any motorcycle racing vehicle that is operated in competition on an open course motor sports facility, i.e., where public access is not generally restricted. This definition is intended to include the several types of motorcycles such as "enduro" and "cross country" that are used in events held in trail or other off-road environments.

(43) "Oval Course Racing Vehicle" means any racing vehicle, not a motorcycle and not a sports car, which is operated upon a closed, oval-type motor sports facility.

(44) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatever.

(45) "Practice Sessions" means any period of time during which racing vehicles are operated at a motor sports facility, other than during racing events. Driver training sessions or similar activities which are not held in anticipation of a subsequent racing event, and which include only vehicles with a stock exhaust system, shall not be considered practice sessions.

(46) "Preferred Frequencies" means those mean frequencies in Hertz preferred for acoustical measurements which for this purpose shall consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1000, 1250, 1600, 2000, 2500, 3150, 4000, 5000, 6300, 8000, 10,000, 12,500.

(47) "Previously Unused Industrial or Commercial Site" means property which has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property. Agricultural activities and silvicultural activities generating infrequent noise emissions shall not be considered as industrial or commercial operations for the purposes of this definition.

(48) "Propulsion Noise" means that noise created in the propulsion of a motor vehicle. This includes, but is not limited to, exhaust system noise, induction system noise, tire noise, cooling system noise, aerodynamic noise, and, where appropriate in the test procedure, braking system noise. This does not include noise created by road vehicle auxiliary equipment such as power take-offs and compressors.

(49) "Public Roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof in this state used by the public or dedicated or appropriated to public use.

(50) "Quiet Area" means any land or facility designated by the Commission as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater. The Department shall submit areas suggested by the public as quiet areas, to the Commission, with the Department's recommendation.

(51) "Racing Events" means any time, speed or distance competition using motor vehicles, conducted under a permit issued by the governmental authority having jurisdiction or under the auspices of a recognized sanctioning body. This definition includes, but is not limited to, events on the surface of land and water. Any motor sports event not meeting this definition shall be subject to the ambient noise limits of OAR 340-035-0030(1)(d).

(52) "Racing Vehicle" means any Motor Vehicle that is designed to be used exclusively in Racing Events or any New Motor Vehicle that has not been certified by its manufacturer as meeting the applicable noise limits of OAR 340-035-0025 or any vehicle participating in or practicing for a Racing Event.

(53) "Recreational Park" means a facility open to the public for the operation of off-road recreational vehicles.

(54) "Road Vehicle" means any motor vehicle registered for use on public roads, including any attached trailing vehicles.

(55) "Road Vehicle Auxiliary Equipment" means those mechanical devices which are built in or attached to a road vehicle and are used primarily for the handling or storage of products in that motor vehicle. This includes, but is not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, blowers, and other mechanical devices.

(56) "Sound Pressure Level" (SPL) means 20 times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. SPL is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter).

(57) "Special Motor Racing Event" means any racing event in which a substantial or significant number of out-of-state racing vehicles are competing or any event which has a special significance to the community and which has been recommended as a special motor racing event by the motor sports advisory committee and approved by the Department.

(58) "Sports Car Racing Vehicle" means any racing vehicle which meets the requirements and specifications of the competition rules of any sports car organization.

(59) "Statistical Noise Level" means the noise level which is equalled or exceeded a stated percentage of the time. An L10 = 65 dBA implies that in any hour of the day 65 dBA can be equalled or exceeded only 10% of the time, or for 6 minutes.

(60) "Stock Exhaust System" means an original equipment manufacturer exhaust system or a replacement for original equipment for a street legal vehicle whose noise emissions do not exceed those of the original equipment.

(61) "Temporary Autocross or Solo Course" means any area upon which a paved course motor sports facility is temporarily established. Typically such courses are placed on parking lots, or other large paved areas, for periods of one or two days.

(62) "Top Fuel-Burning Drag Racing Vehicle" means a drag racing vehicle that operates using principally alcohol (more than 50 percent) or utilizes nitromethane as a component of its operating fuel and commonly known as top fuel and funny cars.

(63) "Trackside" means a sound measuring point of 50 feet from the racing vehicle and specified in Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPCS-35.

(64) "Warning Device" means any device which signals an unsafe or potentially dangerous situation.

(65) "Watercraft Racing Vehicle" means any racing vehicle which is operated upon or immediately above the surface of water.

(66) "Well Maintained Muffler" means a device or combination of devices which effectively decreases the sound energy of internal combustion engine exhaust without a muffler by a minimum of 5 dBA at trackside. A well maintained muffler shall be free of defects or modifications that reduce its sound reduction capabilities. Each outlet of a multiple exhaust system shall comply with the requirements of this subsection, notwithstanding the total engine displacement versus muffler length requirements. Such a muffler shall be a:

(a) Reverse gas flow device incorporating a multitube and baffle design; or a

(b) Perforated straight core device, fully surrounded from beginning to end with a sound absorbing medium, not installed on a rotary engine:

(A) At least 20 inches in inner core length when installed on any drag race engine exceeding 1600 cc (96.7 cubic inches) displacement; or

(B) At least 12 inches in inner core length when installed on any non-motorcycle drag race engine equal to or less than 1600 cc (96.7 cubic inches) displacement; or

(C) At least 6 inches in inner core length and installed at the outlet end of any four-cycle motorcycle drag race engine; or

(D) At least 8 inches in inner core length when installed on any two-cycle motorcycle drag race engine; or an

(c) Annular swirl flow (auger-type) device of:

(A) At least 16 inches in swirl chamber length when installed on any drag race engine exceeding 1600 cc (96.7 cubic inches) displacement; or

(B) At least 10 inches in swirl chamber length when installed on any drag race engine equal to or less than 1600 cc (96.7 cubic inches) displacement; or a

(d) Stacked 360° diffuser disc device; or a

(e) Turbocharger; or a

(f) Go-kart muffler as defined by the International Karting Federation as specified in Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPC-35; or an

(g) Original equipment manufacturer motorcycle muffler when installed on a motorcycle model such muffler was designated for by the manufacturer; or

(h) Boat motor whose exhaust exits beneath the water surface during operation; or a

(i) Formula Vee four-into-one header/collector when installed on a Formula Vee sports car racing vehicle; or a

(j) Hughes-type Racing muffler; or

(k) Any other device demonstrated effective and approved by the motor sports advisory committee and the Department.

[\[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table\(s\) and document\(s\).\]](#)

[LINK TO NPCS 35](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77; DEQ 33-1979, f. & ef. 11-27-79; DEQ 17-1980, f. & ef. 5-28-80; DEQ 33-1980, f. 12-2-80, ef. 1-1-82; DEQ 7-1983, f. & ef. 4-22-83

**340-035-0025**

## **Noise Control Regulations for the Sale of New Motor Vehicles**

### **(1) Standards and Regulations:**

(a) No person shall sell or offer for sale any new motor vehicle designated in this rule which produces a propulsion noise exceeding the noise limits specified in **Table 1**, except as otherwise provided in these rules.

(b) Subsequent to the adoption of a Federal Environmental Protection Agency procedure to determine sound levels of passenger cars and light trucks, or a nationally accepted procedure for these vehicles not similar to those specified and approved under subsection (2)(a) of this rule, the Department shall conduct an evaluation under such new procedure.

(c) After an appropriate evaluation of noise emission data measured under the procedure specified under subsection (1)(b) of this rule, the Department shall make recommendations to the Commission on the adequacy of the procedure and the necessity of amendments to this rule for incorporation of the procedure and associated standards.

(d) No person shall sell or offer to sell any new motorcycle, new motorcycle exhaust system or new motorcycle exhaust system component manufactured after January 1, 1983 unless the motorcycle, exhaust system, or exhaust component is properly labeled or marked in accordance with federal noise regulations specified in Part 205 **Subpart E** of **Title 40** of the **Code of Federal Regulations**.

### **(2) Measurement:**

(a) Sound measurements shall conform to test procedures adopted by the Commission in **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)**, or to standard

methods approved in writing by the Department. These measurements will generally be carried out by the motor vehicle manufacturer on a sample of either prototype or production vehicles. A certification program shall be devised by the manufacturer and submitted to the Department for approval within 60 days after the adoption of this rule;

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise level tests and measurements on new motor vehicles being offered for sale. Therefore, when requested by the Department a new motor vehicle dealer or manufacturer shall cooperate in reasonable noise testing of a specific class of motor vehicle being offered for sale.

(3) Manufacturer's Certification:

(a) Prior to the sale of or offer for sale of any new motor vehicle designated in **Table 1**, the manufacturer or a designated representative shall certify in writing to the Department that vehicles listed in Table 1 made by that manufacturer and offered for sale in the State of Oregon meet applicable noise limits. Such certification will include a statement by the manufacturer that:

(A) The manufacturer has tested sample or prototype vehicles;

(B) That such samples or prototypes met applicable noise limits when tested in accordance with the procedures specified;

(C) That vehicles offered for sale in Oregon are substantially identical in construction to such samples or prototypes.

(b) Nothing in this rule shall preclude the Department from obtaining specific noise measurement data gathered by the manufacturer on prototype or production vehicles for a class of vehicles for which the Department has reasonable grounds to believe is not in conformity with the applicable noise limits.

(4) Exceptions: Upon prior written request from the manufacturer or designated representative, the Department may authorize an exception to this noise rule for a class of motor vehicles, if it can be demonstrated to the Department that for that specific class a vehicle manufacturer has not had adequate lead-time or does not have the technical capability to either bring the motor vehicle noise into compliance or to conduct new motor vehicle noise tests.

(5) Exemptions:

(a) All racing vehicles, except racing motorcycles and racing motorboats, shall be exempt from the requirements of this rule provided that such vehicles are operated only at facilities used for sanctioned racing events;

(b) Racing motorcycles and racing motorboats shall be exempt from the requirements of this rule provided that racing motorcycles are operated only at facilities used for sanctioned racing

events, racing motorboats are operated only at areas designated by the State Marine Board for testing or at an approved racing event, and the following conditions are complied with:

(A) Prior to the sale of a racing motorcycle or racing motorboat, the prospective purchaser shall file a notarized affidavit with the Department, on a Departmentally approved form, stating that it is the intention of such prospective purchaser to operate the vehicle only at facilities used for sanctioned racing events; and

(B) No racing vehicle shall be displayed for sale in the State of Oregon without notice prominently affixed thereto:

(i) That such vehicle will be exempt from the requirements of this rule only upon demonstration to the Department that the vehicle will be operated only at facilities used for sanctioned racing events, and

(ii) That a notarized affidavit will be required of the prospective purchaser stating that it is the intention of such prospective purchaser to operate the vehicle only at facilities used for sanctioned racing events; and

(C) No racing vehicle shall be locally advertised in the State of Oregon as being for sale without notice included:

(i) Which is substantially similar to that required in subparagraph (B)(i) and (ii) of this subsection; and

(ii) Which is unambiguous as to which vehicle such notice applies.





**OAR 340-035-0025**  
**Table 1**  
**New Motor Vehicle Standards**  
**Moving test at 50 feet (15.2 meters)**

<u>Effective for</u>	<u>Maximum Noise Level (dBA)</u>
<b><u>Motorcycles</u></b>	
<u>1975 Model</u>	<u>86</u>
<u>1976 Model</u>	<u>83</u>
<u>1977-1982 Models</u>	<u>81</u>
<u>1983-1985 Models built after December 31, 1982</u>	<u>83</u>
<u>Moped Models built after December 31, 1982</u>	<u>70</u>
<b><u>Off-road models with engine displacements of 170cc and lower</u></b>	
<u>1983-1985 Models built after December 31, 1982</u>	<u>83</u>
<u>1983-1985 Models built after December 31, 1985</u>	<u>80</u>
<b><u>Off road models with engine displacement greater than 170cc</u></b>	
<u>1983-1985 Models built after December 31, 1982</u>	<u>86</u>
<u>1983-1985 Models built after December 31, 1985</u>	<u>82</u>
<b><u>Snowmobiles as defined in ORS 481.048</u></b>	
<u>1975 Models</u>	<u>82</u>
<u>Models after 1975</u>	<u>78</u>
<b><u>Trucks and Buses in excess of 10,000 lbs. (4536 kg) GVWR</u></b>	
<u>1975 Model</u>	<u>82</u>
<u>1976-1981 Models or Models manufactured after Jan. 1, 1978 and before Jan. 1, 1986</u>	<u>83</u>
<u>Models manufactured after Jan.1, 1986, and before (Reserved)</u>	<u>---</u>
<u>Models manufactured after (Reserved)</u>	
<b><u>Automobiles, light trucks and all other road vehicles</u></b>	
<u>1975 Model</u>	<u>83</u>
<u>1976-1978 Models</u>	<u>83</u>
<u>Models after 1978</u>	<u>80</u>
<b><u>Motorboats</u></b>	
<u>Models offered for sale after June 30, 1980</u>	<u>82</u>

[LINK TO NPCS 21](#)

[\[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table\(s\) and document\(s\).\]](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77; DEQ 143, f. & ef. 9-30-77; DEQ 146, f. & ef. 11-3-77; DEQ 18-1978, f. & ef. 12-1-78; DEQ 20-1978, f. & ef. 12-27-78; DEQ 3-1979, f. & ef. 2-2-79; DEQ 10-1980, f. & ef. 4-3-80; DEQ 17-1980, f. & ef. 5-28-80; DEQ 13-1982, f. & ef. 7-21-82; DEQ 7-1983, f. & ef. 4-22-83

**340-035-0030**

**Noise Control Regulations For In-Use Motor Vehicles**

(1) Standards and Regulations:

(a) Road Vehicles:

(A) No person shall operate any road vehicle which exceeds the noise level limits specified in **Table 2** or in such a manner to exceed the noise level limits specified in Table 3, except as otherwise provided in these rules.

(B) No person shall operate a road vehicle with any of the following defects:

(i) No muffler;

(ii) Leaks in the exhaust system;

(iii) Pinched outlet pipe.

(C) Non-conforming "classic" and other "special interest" vehicles may be granted an exception to this rule, pursuant to OAR 340-035-0010, for the purpose of maintaining authentic equipment.

(b) Off-Road Recreational Vehicles:

(A) No person shall operate any off-road recreational vehicle which exceeds the stationary noise level limits specified in **Table 4** or in such a manner as to exceed the moving vehicle noise level limits specified in **Table 4**;

(B) No person shall operate an off-road recreational vehicle with any of the following defects:

(i) No muffler;

(ii) Leaks in the exhaust system;

(iii) Pinched outlet pipe.

(c) Trucks Engaged in Interstate Commerce. Motor vehicles with a GVWR or GCWR in excess of 10,000 pounds which are engaged in interstate commerce by trucking and are regulated by **Part 202** of **Title 40** of the **Code of Federal Regulations**, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-574, shall be:

(A) Free from defects which adversely affect sound reduction;

(B) Equipped with a muffler or other noise dissipative device;

(C) Not equipped with any "cut-out" devices, "by-pass" devices, or any other similar devices;  
and

(D) Not equipped with any tire which as originally manufactured or newly retreaded has a tread pattern composed primarily of cavities in the tread, excluding sipes and local chunking, not vented by grooves to the tire shoulder or vented circumferentially to each other around the tire.

(d) Ambient Noise Limits:

(A) No person shall cause, allow, permit, or fail to control the operation of motor vehicles, including motorcycles, on property which he owns or controls, nor shall any person operate any such motor vehicle if the operation thereof increases the ambient noise level such that the appropriate noise level specified in **Table 5** is exceeded as measured from either of the following points, if located within 1,000 feet (305 meters) of the motor vehicle:

(i) Noise sensitive property; or

(ii) A quiet area.

(B) Exempt from the requirements of this section shall be:

(i) Motor vehicles operating in racing events;

(ii) Motor vehicles initially entering or leaving property which is more than 1,000 feet (305 meters) from the nearest noise sensitive property or quiet area;

(iii) Motor vehicles operating on public roads; and

(iv) Motor vehicles operating off-road for non-recreational purposes.

(e) Auxiliary Equipment Noise Limits:

(A) No person shall operate any road vehicle auxiliary equipment which exceeds the noise limits specified in **Table 6**, except as otherwise provided in these rules;

(B) No person shall cause, allow, permit, or fail to control the operation of any road vehicle auxiliary equipment that exceeds 50 dBA for more than 30 minutes between 10 p.m. and 7 a.m. at any appropriate noise sensitive property measurement point as specified in OAR 340-035-0035(3)(b).

(f) Motorcycles manufactured after December 31, 1982 to Federal Noise Regulations (**40 CFR Part 205**):

(A) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for the purposes of maintenance, repair, or replacement of any device or element of design incorporated in the motorcycle for the purpose of noise control;

(B) No person shall remove or deface any noise label or mark required by federal law which is affixed to any motorcycle or motorcycle part for purposes of identifying the motorcycle or motorcycle part as a federally regulated product;

(C) No person shall operate any road or off-road motorcycle manufactured to federal noise law that does not bear a label or mark on the exhaust system that matches the model specific code of the motorcycle on which the system is installed;

(D) No person shall operate, nor shall any person cause, allow, permit or fail to control the operation of any competition motorcycle identified for "competition use only" by the noise label or mark required by federal law on any property other than a motor sports facility in a practice session or a racing event;

(E) No person shall operate, nor shall any person cause, allow, permit or fail to control the operation of any motorcycle fitted with an exhaust system or exhaust system component identified for "competition motorcycles only" by the noise label or mark required by federal law on any property other than a motor sports facility in a practice session or a racing event.

(2) Measurement. Sound measurement shall conform to test procedures adopted by the Commission in **Sound Measurement Procedures Manual (NPCS-1)** and **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)** or to standard methods approved in writing by the Department.

(3) Exemptions:

(a) Motor vehicles registered as antique or historical motor vehicles licensed in accordance with ORS 481.205(4) are exempt from these regulations;

(b) Motor vehicle warning devices are exempt from these regulations;

(c) Vehicles equipped with at least two snowtread tires are exempt from the noise limits of **Table 3**;

(d) Motor vehicles described in subsection (1)(c) of this rule, which are demonstrated by the operator to be in compliance with the noise levels in Table 3, for operation greater than 35 mph, are exempt from these regulations;

(e) Auxiliary equipment operated on construction sites or in the maintenance of capital equipment or to avoid or reduce the severity of accidents or operated on a farm for agricultural purposes or operated on forest land as defined in subsection (1) of ORS 526.324 for activities related to the growing or harvesting of forest tree species are exempt from these regulations.

(4) Equivalency:

(a) The in-use motor vehicle standards specified in **Table 2** and **3** have been determined by the Department to be substantially equivalent to the 25 foot stationary test standards set forth in 1977 Oregon, Laws, Chapter 273;

(b) Tests shall be conducted according to the procedures in **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)** or to standard methods approved in writing by the Department.





# OAR 340-035-0030


## Table 2

### In-Use Road Vehicle Standards Stationary Test

<u>Model Year</u>	<u>Maximum Noise Level (dBA)</u>	<u>Minimum Distance from Vehicle to Measurement Point</u>
<u>All Vehicles Described in ORS 481.205(2)</u>		
<u>Before 1976</u>	<u>94</u>	<u>25 feet (7.6 meters)</u>
<u>1976 and after</u>	<u>91</u>	<u>25 feet (7.6 meters)</u>
<u>All Other Trucks in Excess of 8,000 pounds (3629 kg.) GVRW</u>		
<u>Before 1976</u>	<u>94</u>	<u>25 feet (7.6 meters)</u>
<u>1976-1981</u>	<u>91</u>	<u>25 feet (7.6 meters)</u>
<u>After 1981</u>	<u>88</u>	<u>25 feet (7.6 meters)</u>
<u>Motorcycles</u>		
<u>1975 and Before</u>	<u>102</u>	<u>20 inches (1/2 meter)</u>
<u>After 1975</u>	<u>99</u>	<u>20 inches (1/2 meter)</u>
<u>Front-engine Automobiles, Light Trucks, All Other Front-engine Road Vehicles</u>		
<u>All</u>	<u>95</u>	<u>20 inches (1/2 meter)</u>
<u>Rear-engine Automobiles, Light Trucks and All Other Front-engine Road Vehicles</u>		
<u>All</u>	<u>95</u>	<u>20 inches (1/2 meter)</u>
<u>Buses as Defined Under ORS 481.030</u>		
<u>Before 1976</u>	<u>94</u>	<u>25 feet (7.6 meters)</u>
<u>1976 and After</u>	<u>91</u>	<u>25 feet (7.6 meters)</u>

 <b><u>OAR 340-035-0030</u></b> <b><u>Table 4</u></b> <b><u>Off-Road Recreational Vehicle Standards</u></b> <b><u>Allowable Noise Limits</u></b>		
<u>Model Year</u>	<u>Maximum Noise Level (dBA and distance from vehicle to measuring point)</u>	
	<u>Stationary Test 20 inches (.5 meters)</u>	<u>Moving Test at 50 feet (15.2 meters)</u>
<b><u>Motorcycles</u></b>		
<u>1975 and before</u>	<u>102</u>	<u>85</u>
<u>After 1975</u>	<u>99</u>	<u>82</u>
<b><u>Snowmobiles</u></b>		
<u>1971 and before</u>	<u>---</u>	<u>86</u>
<u>1972-1975</u>	<u>---</u>	<u>84</u>
<u>After 1975</u>	<u>---</u>	<u>80</u>
<b><u>Boats</u></b>		
<u>Underwater exhaust - all</u>	<u>100</u>	<u>84</u>
<u>Atmosphere exhaust - all</u>	<u>100</u>	<u>84</u>
<b><u>All Others</u></b>		
<u>Front engine - all</u>	<u>95</u>	<u>78</u>
<u>Mid and Rear Engines - all</u>	<u>97</u>	<u>78</u>

 <b><u>OAR 340-035-0030</u></b> <b><u>Table 5</u></b> <b><u>Ambient Standards for Vehicles Operated Near Noise Sensitive Property</u></b> <b><u>Allowable Noise Limits</u></b>	
<u>Time</u>	<u>Maximum Noise Level</u>
<u>7:00 a.m. – 10:00 p.m.</u>	<u>60</u>
<u>10:00 p.m. – 7:00 a.m.</u>	<u>55</u>

 <div> <p><b><u>OAR 340-035-0030</u></b></p> <p><b><u>Table 6</u></b></p> <p><b><u>Auxiliary Equipment Driven by Primary Engine</u></b></p> <p><b><u>Noise Standards</u></b></p> <p><b><u>Stationary Test at 50 feet (15.2 meters) or Greater</u></b></p> </div>	
<b><u>Model Year</u></b>	<b><u>Maximum Noise Level dBA</u></b>
<b><u>Before 1976</u></b>	<b><u>88</u></b>
<b><u>1976-1978</u></b>	<b><u>85</u></b>
<b><u>After 1978</u></b>	<b><u>82</u></b>

[LINK TO NPCS 1](#)

[LINK TO NPCS 21](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table(s) and document(s).]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77;

DEQ 147(Temp), f. & ef. 12-1-77; DEQ 2-1978, f. & ef. 3-1-78; DEQ 7-1983, f. & ef. 4-22-83

### **340-035-0035**

#### **Noise Control Regulations for Industry and Commerce**

##### **(1) Standards and Regulations:**

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 7**, except as otherwise provided in these rules.

##### **(b) New Noise Sources:**

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 8**, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind



turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

(iii) For noise levels generated or caused by a wind energy facility:

(I) The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 26 dBA or the actual ambient background level. The person owning the wind energy facility may conduct measurements to determine the actual ambient L10 and L50 background level .

(II) The "actual ambient background level" is the measured noise level at the appropriate measurement point as specified in subsection (3)(b) of this rule using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with windspeed measurements of hub height conditions at the nearest wind turbine location. "Actual ambient background level" does not include noise generated or caused by the wind energy facility.

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits specified in Table 8), if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L10 or L50 on the sensitive property by more than 10 dBA at the appropriate measurement point.

(IV) For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise level of 26 dBA or to the actual

ambient background L10 and L50 noise level, if measured. The facility complies with the noise ambient background standard if this comparison shows that the increase in noise is not more than 10 dBA over this entire range of wind speeds.

(V) For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when the facility's nearest wind turbine is operating over the entire range of wind speeds between cut-in speed and the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured, is not more than 10 dBA over this entire range of wind speeds.

(VI) For purposes of determining whether a proposed wind energy facility would satisfy the **Table 8** standards, noise levels at the appropriate measurement point are predicted by using the turbine's maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all of the proposed wind facility's turbines are operating at the maximum sound power level.

(VII) For purposes of determining whether an operating wind energy facility satisfies the **Table 8** standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility's nearest wind turbine is operating at the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled.

(c) Quiet Areas. No person owning or controlling an industrial or commercial noise source located either within the boundaries of a quiet area or outside its boundaries shall cause or permit the operation of that noise source if the statistical noise levels generated by that source exceed the levels specified in **Table 9** as measured within the quiet area and not less than 400 feet (122 meters) from the noise source.

(d) Impulse Sound. Notwithstanding the noise rules in **Tables 7** through 9, no person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the sound pressure levels specified below, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule:

(A) Blasting. 98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.

(B) All Other Impulse Sounds. 100 db, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.

(e) Octave Bands and Audible Discrete Tones. When the Director has reasonable cause to believe that the requirements of subsection (1)(a), (b), or (c) of this rule do not adequately

protect the health, safety, or welfare of the public as provided for in ORS Chapter 467, the Department may require the noise source to meet the following rules:

(A) Octave Bands. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceeds applicable levels specified in **Table 10**.

(B) One-third Octave Band. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

(i) 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(ii) 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(iii) 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;

(iv) This rule shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in Table 10 for the octave band which contains such one-third octave band.

(2) Compliance. Upon written notification from the Director, the owner or controller of an industrial or commercial noise source operating in violation of the adopted rules shall submit a compliance schedule acceptable to the Department. The schedule will set forth the dates, terms, and conditions by which the person responsible for the noise source shall comply with the adopted rules.

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department;

(b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:

(A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;

(B) That point on the noise sensitive property line nearest the noise source.

(4) Monitoring and Reporting:

(a) Upon written notification from the Department, persons owning or controlling an industrial or commercial noise source shall monitor and record the statistical noise levels and operating times of equipment, facilities, operations, and activities, and shall submit such data to the Department in the form and on the schedule requested by the Department. Procedures for such measurements shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1);

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise tests and measurements. Therefore, when requested by the Department, the owner or operator of an industrial or commercial noise source shall provide the following:

(A) Access to the site;

(B) Reasonable facilities, where available, including but not limited to, electric power and ladders adequate to perform the testing;

(C) Cooperation in the reasonable operation, manipulation, or shutdown of various equipment or operations as needed to ascertain the source of sound and measure its emission.

(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of this rule, the rules in section (1) of this rule shall not apply to:

(a) Emergency equipment not operated on a regular or scheduled basis;

(b) Warning devices not operating continuously for more than 5 minutes;

(c) Sounds created by the tires or motor used to propel any road vehicle complying with the noise standards for road vehicles;

(d) Sounds resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad only to the extent that such equipment or facility is regulated by pre-emptive federal regulations as set forth in Part 201 of Title 40 of the Code of Federal Regulations, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-576; but this exemption does not apply to any standard, control, license, regulation, or restriction necessitated by special local conditions which is approved by the Administrator of the EPA after consultation with the Secretary of Transportation pursuant to procedures set forth in Section 17(c)(2) of the Act;

(e) Sounds created by bells, chimes, or carillons;

(f) Sounds not electronically amplified which are created by or generated at sporting, amusement, and entertainment events, except those sounds which are regulated under other noise standards. An event is a noteworthy happening and does not include informal, frequent, or ongoing activities such as, but not limited to, those which normally occur at bowling alleys or amusement parks operating in one location for a significant period of time;

(g) Sounds that originate on construction sites.

(h) Sounds created in construction or maintenance of capital equipment;

(i) Sounds created by lawn care maintenance and snow removal equipment;

(j) Sounds generated by the operation of aircraft and subject to pre-emptive federal regulation. This exception does not apply to aircraft engine testing, activity conducted at the airport that is not directly related to flight operations, and any other activity not pre-emptively regulated by the federal government or controlled under OAR 340-035-0045;

(k) Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030(1)(e);

(l) Sounds created by agricultural activities;

(m) Sounds created by activities related to the growing or harvesting of forest tree species on forest land as defined in subsection (1) of ORS 526.324.

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:

(a) Unusual and/or infrequent events;

(b) Industrial or commercial facilities previously established in areas of new development of noise sensitive property;

(c) Those industrial or commercial noise sources whose statistical noise levels at the appropriate measurement point are exceeded by any noise source external to the industrial or commercial noise source in question;

(d) Noise sensitive property owned or controlled by the person who controls or owns the noise source;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use.



## OAR 340-035-0035

### Table 7

#### Existing Industrial and Commercial Noise Source Standards Allowable Statistical Noise Levels in Any One Hour

<u>7:00 a.m. – 10:00 p.m.</u>	<u>10:00 p.m. – 7:00 a.m.</u>
<u>L<sub>50</sub> – 55 dBA</u>	<u>L<sub>50</sub> – 50 dBA</u>
<u>L<sub>10</sub> – 60 dBA</u>	<u>L<sub>10</sub> – 55 dBA</u>
<u>L<sub>1</sub> – 75 dBA</u>	<u>L<sub>1</sub> – 60 dBA</u>





## OAR 340-035-0035

### Table 8

#### New Industrial and Commercial Noise Source Standards Allowable Statistical Noise Levels in Any One Hour

<u>7:00 a.m. – 10:00 p.m.</u>	<u>10:00 p.m. – 7:00 a.m.</u>
<u>L<sub>50</sub> – 55 dBA</u>	<u>L<sub>50</sub> – 50 dBA</u>
<u>L<sub>10</sub> – 60 dBA</u>	<u>L<sub>10</sub> – 55 dBA</u>
<u>L<sub>1</sub> – 75 dBA</u>	<u>L<sub>1</sub> – 60 dBA</u>

 <div> <p><b><u>OAR 340-035-0035</u></b></p> <p><b><u>Table 9</u></b></p> <p><b><u>Industrial and Commercial Noise Source Standards for Quiet Areas</u></b></p> <p><b><u>Allowable Statistical Noise Levels in Any One Hour</u></b></p> </div>		
	<b><u>7:00 a.m. – 10:00 p.m.</u></b>	<b><u>10:00 p.m. – 7:00 a.m.</u></b>
<u>L<sub>50</sub></u>	<u>50 dBA</u>	<u>45 dBA</u>
<u>L<sub>10</sub></u>	<u>55 dBA</u>	<u>50dBA</u>
<u>L<sub>1</sub></u>	<u>60 dBA</u>	<u>55dBA</u>

 <div> <p><b><u>OAR 340-035-0035</u></b></p> <p><b><u>Table 10</u></b></p> <p><b><u>Median Octave Band Standards For Industrial and Commercial Noise Sources</u></b></p> <p><b><u>Allowable Octave Band Sound Pressure Levels</u></b></p> </div>		
<b><u>Octave Band Frequency (Hz)</u></b>	<b><u>7:00 a.m. – 10:00 p.m.</u></b>	<b><u>10:00 p.m. – 7:00 a.m.</u></b>
<u>31.5</u>	<u>68</u>	<u>65</u>
<u>63</u>	<u>65</u>	<u>62</u>
<u>125</u>	<u>61</u>	<u>56</u>
<u>250</u>	<u>55</u>	<u>50</u>
<u>500</u>	<u>52</u>	<u>46</u>
<u>1000</u>	<u>49</u>	<u>43</u>
<u>2000</u>	<u>46</u>	<u>40</u>
<u>4000</u>	<u>43</u>	<u>37</u>
<u>8000</u>	<u>40</u>	<u>34</u>

[LINK TO NPCS 1](#)

[\[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table\(s\) and document\(s\).\]](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 77, f. 9-5-74, ef. 9-25-74; DEQ 135, f. & ef. 6-7-77; DEQ 8-1980, f. & ef. 3-11-80; DEQ 7-1983, f. & ef. 4-22-83; DEQ 5-2004, f. & cert. ef. 6-11-04

### **340-035-0040**

## **Noise Control Regulations for Motor Sports Vehicles and Facilities**

### **(1) Statement of Purpose:**

(a) The Commission finds that the periodic noise pollution caused by Oregon motor sports activities threatens the environment of citizens residing in the vicinity of motor sports facilities. To mitigate motor sports noise impacts, a coordinated statewide program is desirable to ensure that effective noise abatement programs are developed and implemented where needed. This abatement program includes measures to limit the creation of new noise impacts and the reduction of existing noise impacts to the extent necessary and practicable;

(b) Since the Commission also recognizes the need of Oregon's citizens to participate in recreational activities of their choice, these rules balance those citizen needs which may conflict when motor sports facilities are in operation. Therefore, a policy of continuing participation in standards development through the active cooperation of interested parties is adopted. The choice of these parties is to limit the noise emission levels of racing and recreational vehicles, to designate equipment requirements, and to establish appropriate hours of operation. It is anticipated that safety factors, limited technology, special circumstances, and special events may require exceptions to these rules in some instances; therefore, a mechanism to accommodate this necessity is included in this rule;

(c) This rule is designed to encourage the motor sports facility owner, the vehicle operator, and government to cooperate to limit and diminish noise and its impacts. These ends can be accomplished by encouraging compatible land uses and controlling and reducing the racing vehicle noise impacts on communities in the vicinity of motor sports facilities to acceptable levels;

(d) This rule is enforceable by the Department and civil penalties ranging from a minimum of \$25 to a maximum of \$500 may be assessed for each violation. The motor sports facility owner, the racing vehicle owner and the racing vehicle driver are held responsible for compliance with provisions of this rule. A schedule of civil penalties for noise control may be found under OAR 340-012-0052.

### **(2) Standards:**



(a) Drag Racing Vehicle. No motor sports facility owner and no person owning or controlling a drag racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well maintained muffler;

(b) Oval Course Racing Vehicle. No motor sports facility owner and no person owning or controlling an oval course racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(c) Sports Car Racing Vehicle. No motor sports facility owner and no person owning or controlling a sports car racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(d) Closed Course Motorcycle Racing Vehicle. No motor sports facility owner and no person owning or controlling a closed course motorcycle racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside or 105 dBA at 20 inches (.5 meter) from the exhaust outlet during the stationary measurement procedure;

(e) Open Course Motorcycle Racing Vehicle. No motor sports facility owner and no person owning or controlling an open course motorcycle racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions do not exceed 105 dBA at 20 inches (.5 meter) from the exhaust outlet during the stationary measurement procedure;

(f) Four Wheel Drive Racing Vehicles. No motor sports facility owner and no person owning or controlling a four wheel drive racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(g) Watercraft Racing Vehicle. No motor sports facility owner and no person owning or controlling a watercraft racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(h) Autocross or Solo Racing Vehicle. No motor sports facility owner and no person owning or controlling an autocross or solo racing vehicle shall cause or permit its operation on any temporary autocross or solo course unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 90 dBA at trackside. Autocross and solo events conducted on a permanent motor sports facility, such as a sports car or go-kart course, shall comply with the requirements for sports car racing vehicles specified in subsection (2)(c) of this rule;

(i) Go-Kart Racing Vehicle. No motor sports facility owner and no person owning or controlling a go-kart racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside.

(3) New Motor Sports Facilities. Prior to the construction or operation of any permanent new motor sports facility, the facility owner shall submit for Department approval the projected motor sports facility noise impact boundaries. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation. Upon approval of the boundaries, this information shall be submitted to the appropriate local planning unit and the Department of Land Conservation and Development for their review and appropriate action.

(4) Practice Sessions. Notwithstanding section (2) of this rule, all racing vehicles in order to operate in practice sessions, shall comply with a noise mitigation plan which shall have been submitted to and approved by the motor sports advisory committee and the Director. Such plans may be developed and submitted prior to each racing season. An approved plan may be varied with prior written approval of the Department.

(5) Recreational Park. When a motor sports facility is used as a recreational park for the operation of off-road recreational vehicles, the ambient noise limits of OAR 340-035-0030(1)(d) shall apply.

(6) Operations:

(a) General. No motor sports facility owner and no person owning or controlling a racing vehicle shall permit its use or operation at any time other than the following:

(A) Sunday through Thursday during the hours 8 a.m. to 10 p.m. local time; and

(B) Friday through Saturday, state and national holidays and the day preceding, not to exceed three consecutive days, during the hours 8 a.m. to 11 p.m. local time.

(b) Overruns. Each motor sports facility may overrun the specified curfew times, including the time specified in subsection (11)(c) of this rule, not to exceed 30 minutes, no more than six days per year due to conditions beyond the control of the owner. Each overrun shall be documented to the Department within ten days of the occurrence;

(c) Special Events. Any approved special motor racing event may also be authorized to exceed this curfew pursuant to subsection (12)(a) of this rule.

(d) Continued Special Events. Any approved special event that cannot be completed within established curfew times due to circumstances beyond the control of the owner, such as but not limited to oil spills and accidents, may be continued the following day under the same conditions provided in the special event exception. The Department shall be notified within ten days of any continued special event.

(7) Measurement and Procedures. All instruments, procedures and personnel involved in performing sound level measurements shall conform to the requirements specified in **Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPC-35**, or to standard methods approved in writing by the Department.

(8) Monitoring and Reporting:

(a) It shall be the responsibility of the motor sports facility owner to measure and record the required noise level data as specified under subsections (2)(b) - (i) of this rule and the **Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPC-35**. The owner shall either keep such recorded noise data available for a period of at least one calendar year or submit such data to the Department for storage. Upon request the owner shall make such recorded noise data available to the Department;

(b) When requested by the Department, any motor sports facility owner shall provide the following:

(A) Free access to the facility;

(B) Free observation of noise level monitoring;

(C) Cooperation and assistance in obtaining the reasonable operation of any Racing Vehicle using the facility as needed to ascertain its noise emission level.

(9) Vehicle standards. No motor sports facility owner and no person owning or controlling a racing vehicle shall cause or permit a racing event or practice session unless the vehicle is equipped and operated in accordance with these rules.

(10) Vehicle Testing. Nothing in this section shall preclude the motor sports facility owner from testing or barring the participation of any racing vehicle for non-compliance with these rules.

(11) Exemptions:

(a) Any motor sports facility whose racing surface is located more than 2 miles from the nearest noise sensitive property shall be exempt from this rule;

(b) Any top fuel-burning drag racing vehicle shall be exempt from the requirements of subsection (2)(a) of this rule. No later than January 31, 1985 the Department shall report to the Commission on progress toward muffler technology development for this vehicle class and propose any necessary recommendations to amend this exemption;

(c) Operation of non-complying jet powered dragsters between the hours of 11 a.m. and 10 p.m.;

(d) Operation of non-muffled racing vehicles at practice sessions between 12 noon and 3 p.m. as part of an approved plan as required pursuant to section (4) of this rule.

(12) Exceptions. The Department shall consider the majority and minority recommendations of the motor sports advisory committee prior to the approval or denial of any exception to these rules. Exceptions may be authorized by the Department for the following pursuant to OAR 340-035-0010:

(a) Special motor racing events;

(b) Race vehicle or class of vehicles whose design or mode of operation makes operation with a muffler inherently unsafe or technically unfeasible;

(c) Motor sports facilities previously established in areas of new development of noise sensitive property;

(d) Noise sensitive property owned or controlled by a motor sports facility owner;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use;

(f) Any motor sports facility owner or race sanctioning body that proposes a racing vehicle noise control program that accomplishes the intended results of the standards of section (2) of this rule, the measurement and procedures of section (7) of this rule, the monitoring and the reporting of section (8) of this rule;

(g) Any motor sports facility demonstrating that noise sensitive properties do not fall within the motor sports facility noise impact boundaries may be except from the curfew limits of section (6) of this rule and the monitoring and reporting requirements of section (8) of this rule;

(h) Any practice session for non-muffled racing vehicles that does not meet the exemption requirements specified in subsection (11)(d) of this rule.

(13) Motor Sports Advisory Committee Actions. The committee shall serve at the call of the chairman who shall be elected by the members in accordance with the rules adopted by the committee for its official action.

(14) Effective Date. These rules shall be effective January 1, 1982.

[LINK TO NPCCS 35](#)

[\[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table\(s\) and document\(s\).\]](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 33-1980, f. 12-2-80, ef. 1-1-82; DEQ 7-1983, f. & ef. 4-22-83

**Noise Control Regulations for Airports**

**(1) Statement of Purpose:**

(a) The Commission finds that noise pollution caused by Oregon airports threatens the public health and welfare of citizens residing in the vicinity of airports. To mitigate airport noise impacts a coordinated statewide program is desirable to ensure that effective Airport Noise Abatement Programs are developed and implemented where needed. An abatement program includes measures to prevent the creation of new noise impacts or the expansion of existing noise impacts to the extent necessary and practicable. Each abatement program will primarily focus on airport operational measures to prevent increased, and to lessen existing, noise levels. The program will also analyze the effects of aircraft noise emission regulations and land use controls;

(b) The principal goal of an airport proprietor who may be required to develop an Airport Noise Abatement program under this rule should be to reduce noise impacts caused by aircraft operations, and to address in an appropriate manner the conflicts which occur within the higher noise contours;

(c) The Airport Noise Criterion is established to define a perimeter for study and for noise sensitive use planning purposes. It is recognized that some or many means of addressing aircraft/airport noise at the Airport Noise Criterion Level may be beyond the control of the airport proprietor. It is therefore necessary that abatement programs be developed, whenever possible, with the cooperation of federal, state and local governments to ensure that all potential noise abatement measures are fully evaluated;

(d) This rule is designed to encourage the airport proprietor, aircraft operator, and government at all levels to cooperate to prevent and diminish noise and its impacts. These ends may be accomplished by encouraging compatible land uses and controlling and reducing the airport/aircraft noise impacts on communities in the vicinity of airports to acceptable levels.

(2) Airport Noise Criterion. The criterion for airport noise is an Annual Average Day-Night Airport Noise Level of 55 dBA. The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated within this section.

**(3) Airport Noise Impact Boundary:**

(a) Air Carrier Airports. Within 12 months of designation, the proprietor of any Air Carrier Airport shall submit for Department approval, the existing airport Noise Impact Boundary. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation;

(b) Existing Non-Air Carrier Airports. After an unsuccessful effort to resolve a noise problem pursuant to section (5) of this rule, the Director may require the proprietor of any existing non-air carrier airport to submit for Department approval, all information reasonably necessary for the calculation of the existing airport Noise Impact Boundary. This information is specified in the Department's **Airport Noise Control Procedure Manual (NPCS-37)**, as approved by the Commission. The proprietor shall submit the required information within twelve months of receipt of the Director's written notification;

(c) New Airports. Prior to the construction or operation and any required local government land-use approval of any New Airport, the proprietor shall submit for Department approval the projected airport Noise Impact Boundary for the first full calendar year of operation. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation. The Department shall notify the appropriate local planning unit of the results of their evaluation;

(d) Airport Master Planning. Any airport proprietor who obtains funding to develop an airport Master Plan shall submit for Department approval an existing noise impact boundary and projected noise impact boundaries at five, ten, and twenty years into the future. The data and analysis used to determine the boundaries shall also be submitted to the Department for evaluation;

(e) Impact Boundary Approval. Within 60 days of the receipt of a completed airport noise impact boundary, the Department shall either consider the boundary approved or provide written notification to the airport proprietor of deficiencies in the analysis.

#### (4) Airport Noise Abatement Program and Methodology:

(a) Abatement Program. The proprietor of an existing or new airport whose airport Noise Impact Boundary includes Noise Sensitive Property, or may include Noise Sensitive Property, shall submit a proposed Airport Noise Abatement Program for Commission approval within 12 months of notification, in writing, by the Director. The Director shall give such notification when the Commission has reasonable cause to believe that an abatement program is necessary to protect the health, safety or welfare of the public following a public informational hearing on the question of such necessity. Reasonable cause shall be based upon a determination that:

(A) Present or planned airport operations cause or may cause noise impacts that interfere with noise sensitive use activities such as communication and sleep to the extent that the public health, safety or welfare is threatened;

(B) These noise impacts will occur on property presently used for noise sensitive purposes, or where noise sensitive use is permitted by zone or comprehensive plan; and

(C) It appears likely that a feasible noise abatement program may be developed.

(b) Program Elements. An Airport Noise Abatement Program shall consist of all of the following elements, but if it is determined by the Department that any element will not aid the development of the program, it may be excluded:

(A) Maps of the airport and its environs, and supplemental information, providing:

(i) Projected airport noise contours from the Noise Impact Boundary to the airport property line in 5 dBA increments under current year of operations and at periods of five, ten, and twenty years into the future with proposed operational noise control measures designated in paragraph (4)(b)(B);

(ii) All existing Noise Sensitive Property within the airport Noise Impact Boundary;

(iii) Present zoning and comprehensive land use plan permitted uses and related policies;

(iv) Physical layout of the airport including the size and location of the runways, taxiways, maintenance and parking areas;

(v) Location of present and proposed future flight tracks;

(vi) Number of aircraft flight operations used in the calculation of the airport noise levels. This information shall be characterized by flight track, aircraft type, flight operation, number of daytime and nighttime operations, and takeoff weight of commercial jet transports.

(B) An airport operational plan designed to reduce airport noise impacts at Noise Sensitive Property to the Airport Noise Criterion to the greatest extent practicable. The plan shall include an evaluation of the appropriateness and effectiveness of the following noise abatement operations by estimating potential reductions in the airport Noise Impact Boundary and numbers of Noise Sensitive Properties impacted within the boundary, incorporating such options to the fullest extent practicable into any proposed Airport Noise Abatement Program:

(i) Takeoff and landing noise abatement procedures such as thrust reduction or maximum climb on takeoff;

(ii) Preferential and priority runway use systems;

(iii) Modification in approach and departure flight tracks;

(iv) Rotational runway use systems;

(v) Higher glide slope angles and glide slope intercept altitudes on approach;

(vi) Displaced runway thresholds;

(vii) Limitations on the operation of a particular type or class of aircraft, based upon aircraft noise emission characteristics;

- (viii) Limitations on operations at certain hours of the day;
- (ix) Limitations on the number of operations per day or year;
- (x) Establishment of landing fees based on aircraft noise emission characteristics or time of day;
- (xi) Rescheduling of operations by aircraft type or time of day;
- (xii) Shifting operations to neighboring airports;
- (xiii) Location of engine run-up areas;
- (xiv) Times when engine run-up for maintenance can be done;
- (xv) Acquisition of noise suppressing equipment and construction of physical barriers for the purpose of reducing aircraft noise impact;
- (xvi) Development of new runways or extended runways that would shift noise away from populated areas or reduce the noise impact within the Airport Noise Impact Boundary.

(C) A proposed land use and development control plan, and evidence of good faith efforts by the proprietor to obtain its approval, to protect the area within the airport Noise Impact Boundary from encroachment by non-compatible noise sensitive uses and to resolve conflicts with existing unprotected noise sensitive uses within the boundary. The Plan is not intended to be a community-wide comprehensive plan; it should be airport-specific, and should be of a scope appropriate to the size of the airport facility and the nature of the land uses in the immediate area. Affected local governments shall have an opportunity to participate in the development of the plan, and any written comments offered by an affected local government shall be made available to the Commission. The Department shall review the comprehensive land use plan of the affected local governments to ensure that reasonable policies have been adopted recognizing the local government's responsibility to support the proprietor's efforts to protect the public from excessive airport noise. The plan may include, but not be limited to, the following actions within the specified noise impact zones:

- (i) Changes in land use through non-noise sensitive zoning and revision of comprehensive plans, within the Noise Impact Boundary (55 dBA);
- (ii) Influencing land use through the programming of public improvement projects within the Noise Impact Boundary (55 dBA);
- (iii) Purchase assurance programs within the 65 dBA boundary;
- (iv) Voluntary relocation programs within the 65 dBA boundary;



(v) Soundproofing programs within the 65 dBA boundary, or within the Noise Impact Boundary (55 dBA) if the governmental entity with land use planning responsibility desires, and will play a major role in implementation.

(vi) Purchase of land for airport use within the 65 dBA boundary;

(vii) Purchase of land for airport related uses within the 65 dBA boundary;

(viii) Purchase of land for non-noise sensitive public use within the Noise Impact Boundary (55 dBA);

(ix) Purchase of land for resale for airport noise compatible purposes within the 65 dBA boundary;

(x) Noise impact disclosure to purchaser within the Noise Impact Boundary (55 dBA);

(xi) Modifications to Uniform State Building Code for areas of airport noise impact within the Noise Impact Boundary (55 dBA).

(c) Federal Aviation Administration Concurrence. The proprietor shall use good faith efforts to obtain concurrence or approval for any portions of the proposed Airport Noise Abatement Program for which the airport proprietor believes that Federal Aviation Administration concurrence or approval is required. Documentation of each such effort and a written statement from FAA containing its response shall be made available to the Commission;

(d) Commission Approval. Not later than twelve months after notification by the Director pursuant to subsection (4)(a) of this rule, the proprietor shall submit a proposed Airport Noise Abatement Program to the Commission for approval. Upon approval, the abatement program shall have the force and effect of an order of the Commission. The Commission may direct the Department to distribute copies of the approved abatement program to interested federal, state and local governments, and to other interested persons, and may direct the Department to undertake such monitoring or compliance assurance work as the Commission deems necessary to ensure compliance with the terms of its order. The Commission shall base its approval or disapproval of a proposed Noise Abatement Program upon:

(A) The completeness of the information provided;

(B) The comprehensiveness and reasonableness of the proprietor's evaluation of the operational plan elements listed under paragraph (4)(b)(B) of this rule;

(C) The presence of an implementation scheme for the operational plan elements, to the extent feasible;

(D) The comprehensiveness and reasonableness of the proprietor's evaluation of land use and development plan elements listed under paragraph (4)(b)(C) of this rule;

(E) Evidence of good faith efforts to adopt the land use and development plan, or obtain its adoption by the responsible governmental body, to the extent feasible;

(F) The nature and magnitude of existing and potential noise impacts;

(G) Testimony of interested and affected persons; and

(H) Any other relevant factors.

(e) Program Renewal. No later than six months prior to the end of a five-year period following the Commission's approval, each current airport Noise Abatement Program shall be reviewed and revised by the proprietor, as necessary, and submitted to the Commission for consideration for renewal.

(f) Program Revisions. If the Director determines that circumstances warrant a program revision prior to the scheduled five year review, the Airport Proprietor shall submit to the Commission a revised program within 12 months of written notification by the Director. The Director shall make such determination based upon an expansion of airport capacity, increase in use, change in the types or mix of various aircraft utilizing the airport, or changes in land use and development in the impact area that were unforeseen in earlier abatement plans. Any program revision is subject to all requirements of this rule.

(5) Consultation. The Director shall consult with the airport proprietor, members of the public, the Oregon Departments of Transportation, Land Conservation and Development and any affected local government in an effort to resolve informally a noise problem prior to issuing a notification under subsections (3)(b), (4)(a) and (4)(f) of this rule.

(6) Noise Sensitive Use Deviations. The airport noise criterion is designed to provide adequate protection of noise sensitive uses based upon out-of-doors airport noise levels. Certain noise sensitive use classes may be acceptable within the airport Noise Impact Boundary if all measures necessary to protect interior activities are taken.

(7) Airport Noise Monitoring. The Department may request certification of the airport Noise Impact Boundary by actual noise monitoring, where it is deemed necessary to approve the boundary pursuant to subsection (3)(e) of this rule.

(8) Exceptions. Upon written request from the Airport Proprietor, the Department may authorize exceptions to this rule, pursuant to OAR 340-035-0010, for:

(a) Unusual or infrequent events;

(b) Noise sensitive property owned or controlled by the airport;

(c) Noise sensitive property located on land zoned exclusively for industrial or commercial use.

[LINK TO NPC 37](#)

[\[ED. NOTE: Tables and documents referenced are not included in rule text. Click here for PDF copy of table\(s\) and document\(s\).\]](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 33-1979, f. & ef. 11-27-79; DEQ 7-1983, f. & ef. 4-22-83

### **340-035-0100**

#### **Variances**

(1) Conditions for Granting. The Commission may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation, or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

(2) Procedure for Requesting. Any person requesting a variance shall make his request in writing to the Department for consideration by the Commission and shall state in a concise manner the facts to show cause why such variance should be granted.

(3) Revocation or Modification. A variance granted may be revoked or modified by the Commission after a public hearing held upon not less than 20 days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the Commission a written request for such notification.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74

### **340-035-0110**

#### **Suspension of Commission and Department Responsibilities**

In 1991, the Legislative Assembly withdrew all funding for implementing and administering ORS Chapter 467 and the Department's noise program. Accordingly, the Commission and the Department have suspended administration of the noise program, including but not limited to processing requests for exceptions and variances, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints. Similarly, the public's obligations to submit plans or certifications to the Department are suspended.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467

Hist.: DEQ 5-2004, f. & cert. ef. 6-11-04

Inserted text is BLUE AND UNDERLINED

Deleted text is ~~RED AND STRIKETHROUGH~~

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### DIVISION 143

#### BALLAST WATER MANAGEMENT

##### 340-143-0005

##### Definitions

- (1) "Ballast Water" means any water and associated sediment used to manipulate the trim and stability of a vessel.
- (2) "Cargo Vessel" means a ship in commerce, other than a tank vessel or a vessel used solely for commercial fish harvesting, of 300 gross tons or more.
- (3) "Coastal Ocean Exchange" means the exchange of ballast water in an area no less than 50 nautical miles from any shore and where the water depth exceeds 200 meters.
- (4) "Common Waters Zone" means the Pacific Coast of North America between 40 and 50 degrees north latitude.
- (5) "DEQ" means the Oregon Department of Environmental Quality.
- (6) "Empty ballast tank" means a ballast tank of a vessel that has been discharged of ballast water from a voyage and , as a result, is expected to have only unpumpable residual ballast water and sediment remaining in the ballast tank.
- (7) "Exchange" means to replace the water in a ballast tank using either flow-through exchange, empty/refill exchange, or other exchange methods described under U.S. Coast Guard rules, 33 CFR, part 151.2035.
- (8) "Exclusive Economic Zone" extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.
- (9) "High-risk Ballast Water" means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.
- (10) "Internal Waters of the State" means those waters of this state that do not have shared jurisdiction with an adjacent state.

(11) "Nonindigenous Species" means any species or other viable biological material entering an ecosystem beyond its natural range. This also includes seeds, eggs, spores and other biological material entering an ecosystem beyond its natural range.

(12) "Oil" means oil, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and any other petroleum-related product.

(13) "Open Sea Exchange" means the exchange of ballast water that occurs in an area no less than 200 nautical miles from any shore and where the water depth exceeds 2,000 meters.

(14) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.

(15) "Passenger Vessel" means a ship of 300 gross tons or more, carrying passengers for compensation.

(16) "Port" means any place to which a vessel is bound to anchor or moor.

(17) "Saltwater flush" means to pump a sufficient volume of coastal ocean or open sea water, depending upon prior ballast source location, into an empty ballast tank and subsequently discharge the ballast water such that the remaining residual ballast water and sediment has a salinity greater than or equal to 30 parts per thousand.

(16) "Sediment" means any matter that settles out of ballast water.

(17) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(18) "Tank Vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue other than:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(19) "Territorial Sea of the United States" means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

(20) "Vessel" means a tank vessel, cargo vessel or passenger vessel.

(21) "Voyage" means any transit by a vessel destined for any Oregon port.

(22) "Waters of the State" mean natural waterways including all tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in

Oregon, navigable and non-navigable, including that portion of the Pacific Ocean that is within Oregon's boundaries.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

### **340-143-0010**

#### **Ballast Water Management: Discharge Prohibitions**

- (1) Vessels may not discharge ballast water containing oil or hazardous material into waters of the state.
- (2) Vessels may not discharge ballast water into waters of the state unless:
  - (a) The vessel discharges ballast water only at the same location where the ballast water originated, provided that the master, operator or person in charge of the vessel can demonstrate compliance with Section (3) of this rule or that the ballast water to be discharged was not mixed with ballast water or sediment from an area other than mid-ocean waters. For purposes of this subsection, "same location" means an area within one nautical mile of the berth or within the recognized breakwater of an Oregon port or place, at which the ballast water to be discharged was loaded;
  - (b) The owner or operator of the vessel conducted proper ballast water exchange management practices before entering waters of the state, such that:
    - (A) The vessel conducted an open sea exchange for ballast tanks containing water sourced outside the Exclusive Economic Zone; or
    - (B) The vessel conducted a coastal ocean exchange for ballast tanks containing water sourced from a port within the Pacific Coast Region of North America;
  - (c) The vessel obtained the ballast water solely from mid-ocean waters that are no less than 200 nautical miles from any shore and where water depth exceeds 2,000 meters;
  - (d) The ballast water originated solely from the common waters zone, as defined by OAR 340-143-0005(5);
  - (e) The ballast water originated solely from municipal or treated drinking water sources and is not mixed with ballast water obtained from areas other than open sea waters;
  - (f) The ballast water had been managed using a shipboard treatment system that meets the certification and discharge standards in OAR 340-143-0050; or

(g) The vessel owner or operator has declared a safety exemption as OAR 340-143-0040(2) specifies.

(3) Empty ballast tanks that contain unpumpable residual ballast water or sediment may only be used for ballasting and subsequent deballasting within waters of the state if the residual ballast water has salinity greater than or equal to 30 parts per thousand at the time of entering state waters. For voyages that have recently sourced ballast from low-salinity waters or are otherwise unable to verify the salinity of the residual ballast water or sediments prior to entering state waters, the vessel operator shall conduct a saltwater flush of empty tank(s):

(a) At least 200 nautical miles from any shore for tank(s) containing water sourced outside the Exclusive Economic Zone; or

(b) At least 50 nautical miles from shore and in waters at least 200 meters deep for tank(s) containing water sourced within the Pacific Coast Region of North America.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

### **340-143-0050**

#### **Ballast Water Management: Use of Shipboard Ballast Water Treatment Systems**

(1) Use of shipboard ballast water treatment systems. Ballast water treated using technology approved for shipboard use by the U.S. Coast Guard and in compliance with federal discharge standards established by the U.S. Environmental Protection Agency may be discharged to waters of the state but may also be subject to additional management practice requirements established under section (2) of this rule.

(2) Ballast exchange plus treatment. For vessels managing ballast water with a shipboard treatment system under federal discharge standards, the vessel operator shall also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand. Prior to treatment, vessel operators shall conduct ballast exchange or saltwater flushing practices as OAR 340-143-0010(2)(b), and 340-143-0010 (3) specify, respectively, resulting in salinity greater than or equal to 30 parts per thousand. The ballast water exchange requirement under this section does not apply if:

(a) The vessel is equipped with a ballast water treatment system meeting a ballast discharge standard more stringent than the International Maritime Organization D-2 standards established under the 2004 Ballast Water Management Convention, such that discharged ballast contains:

(A) Less than 1 living organism per 10 cubic meters that is 50 or more micrometers in minimum dimension;



(B) Less than 1 living organism per 10 milliliters that is less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

(C) Concentrations of indicator microbes that are less than:

(i) One colony-forming unit of toxicogenic *Vibrio cholera* (serotypes 01 and 0139) per 100 milliliters or less than one colony-forming unit of that microbe per gram of wet weight of zoological samples;

(ii) 126 colony-forming units of *Escherichia coli* per 100 milliliters; and

(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters.

(b) The ballast water discharge qualifies for an exemption set forth in OAR 340-143-0010(2)(a), OAR 340-143-0010(2)(c), OAR 340-143-0010(2)(d), or OAR 340-143-0010(2)(e), or

(c) The vessel owner or operator determines that compliance with the ballast water exchange requirement meets safety exemption conditions set forth in OAR 340-143-0040(2).

(3) As an alternative to discharging high-risk ballast water identified in 340-143-0040, DEQ may authorize, by order in writing, using ballast water treatment systems identified as promising technology by the U.S. EPA, U.S. Coast Guard or neighboring states.

(4) DEQ shall repeal section (2) of this rule effective January 1, 2025. Prior to this date, DEQ, in consultation with a stakeholder advisory group, will review current science on the efficacy of federal ballast water discharge standards and shipboard treatment systems for preventing introductions of aquatic invasive species to Oregon waters. The review may provide recommendations including, but not limited to, an extended repeal date of this rule, if necessary.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### DIVISION 35

#### NOISE CONTROL REGULATIONS

**NOTE:** Some of these rules refer to documents titled “NPCS.” These are noise manuals. As they are too large to incorporate into the text of the rules, they are provided as attachments to this document.

##### General

##### 340-035-0005

###### Policy

In the interest of public health and welfare, and in accordance with ORS 467.010, it is declared to be the public policy of the State of Oregon:

- (1) To provide a coordinated state-wide program of noise control to protect the health, safety, and welfare of Oregon citizens from the hazards and deterioration of the quality of life imposed by excessive noise emissions;
- (2) To facilitate cooperation among units of state and local governments in establishing and supporting noise control programs consistent with the state program and to encourage the enforcement of viable local noise control regulations by the appropriate local jurisdiction;
- (3) To develop a program for the control of excessive noise sources which shall be undertaken in a progressive manner, and each of its objectives shall be accomplished by cooperation among all parties concerned.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.010

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74

##### 340-035-0010

###### Exceptions

- (1) Upon written request from the owner or controller of a noise source, the Department may authorize exceptions as specifically listed in these rules.
- (2) In establishing exceptions, the Department shall consider the protection of health, safety, and welfare of Oregon citizens as well as the feasibility and cost of noise abatement; the past, present, and future patterns of land use; the relative timing of land use changes; and other legal constraints. For those exceptions which it authorizes the Department shall specify the times

during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74

### **340-035-0015**

#### **Definitions**

As used in this division:

- (1) "Air Carrier Airport" means any airport that serves air carriers holding Certificates of Public Convenience and Necessity issued by the Civil Aeronautic Board.
- (2) "Airport Master Plan" means any long-term development plan for the airport established by the airport proprietor.
- (3) "Airport Noise Abatement Program" means a Commission-approved program designed to achieve noise compatibility between an airport and its environs.
- (4) "Airport Proprietor" means the person who holds title to an airport.
- (5) "Ambient Noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.
- (6) "Annual Average Day-Night Airport Noise Level" means the average, on an energy basis, of the daily Day-Night Airport Noise Level over a 12-month period.
- (7) "Any One Hour" means any period of 60 consecutive minutes during the 24-hour day.
- (8) "Closed Course Motorcycle Racing Vehicle" means any motorcycle racing vehicle that is operated in competition or practice session on a closed course motor sports facility, i.e., where public access is restricted and admission is generally charged.
- (9) "Commission" means the Environmental Quality Commission.
- (10) "Construction" shall mean building or demolition work and shall include all activities thereto such as clearing of land, earthmoving, and landscaping, but shall not include the production of construction materials.
- (11) "Day-Night Airport Noise Level (Ldn)" means the Equivalent Noise Level produced by airport/aircraft operations during a 24-hour time period, with a 10 decibel penalty applied to the level measured during the nighttime hours of 10 p.m. to 7 a.m.

(12) "Department" means the Department of Environmental Quality.

(13) "Director" means the Director of the Department.

(14) "Drag Racing Vehicle" means any racing vehicle used to compete in any acceleration competition initiated from a standing start and continued over a straight line course.

(15) "Emergency Equipment" means noise emitting devices required to avoid or reduce the severity of accidents. Such equipment includes, but is not limited to, safety valves and other unregulated pressure relief devices.

(16) "Equivalent Noise Level (Leq)" means the equivalent steady state sound level in A-weighted decibels for a stated period of time which contains the same acoustic energy as the actual time-varying sound level for the same period of time.

(17) "Existing Industrial or Commercial Noise Source" means any industrial or commercial noise source for which installation or construction was commenced prior to January 1, 1975.

(18) "Farm Tractor" means any motor vehicle designed primarily for use in agricultural operations for drawing or operating plows, mowing machines, or other implements of husbandry.

(19) "Four Wheel Drive Racing Vehicle" means any four-wheeled racing vehicle with at least one wheel on the front and rear axle driven by the engine or any racing vehicle participating in an event with predominantly four wheel drive racing vehicles.

(20) "Go-Kart Racing Vehicle" means a light-weight four-wheeled racing vehicle of the type commonly known as a go-kart.

(21) "Impulse Sound" means either a single pressure peak or a single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound pressure measuring instrument or "C" weighted, slow response instrument and specified by dB and dBC respectively.

(22) "In-Use Motor Vehicle" means any motor vehicle which is not a new motor vehicle.

(23) "Industrial or Commercial Noise Source" means that source of noise which generates industrial or commercial noise levels.

(24) "Industrial or Commercial Noise Levels" means those noises generated by a combination of equipment, facilities, operations, or activities employed in the production, storage, handling, sale, purchase, exchange, or maintenance of a product, commodity, or service and those noise levels generated in the storage or disposal of waste products.

(25) "Motorboat" as used in OAR 340-035-0025 means a watercraft propelled by an internal combustion engine but does not include a boat powered by an outboard motor or an inboard/outboard power package designed to exhaust beneath the surface of the water.

(26) "Motorcycle" means any motor vehicle, except farm tractors, designed to travel on not more than three wheels which are in contact with the ground.

(27) "Motor Sports Advisory Committee" means a committee appointed by the Director, from among the nominees, for the purpose of technical advice on racing activities and to recommend Exceptions to these rules as specified in OAR 340-035-0040(12). This Committee shall consist of:

- (a) One permanent public member nominated by a noise impacted group or association; and
- (b) One representative of each of the racing vehicle types identified in OAR 340-035-0040(2) as nominated by the respective sanctioning bodies; and
- (c) The program manager of the Department's noise pollution control section who shall also serve as the departmental staff liaison to this body; and
- (d) An attorney; and
- (e) An acoustical engineer.

(28) "Motor Sports Facility" means any facility, track or course upon which racing events are conducted.

(29) "Motor Sports Facility Noise Impact Boundaries" means the daily 55 dBA day-night (Ldn) noise contours around the motor sports facility representing events that may occur on the day of maximum projected use.

(30) "Motor Sports Facility Owner" means the owner or operator of a motor sports facility or an agent or designee of the owner or operator. When a Racing Event is held on public land, the event organizer (i.e., promoter) shall be considered the motor sports facility owner for the purposes of these rules.

(31) "Motor Vehicle" means any vehicle which is, or is designed to be self-propelled or is designed or used for transporting persons or property. This definition excludes airplanes, but includes watercraft.

(32) "New Airport" means any airport for which installation, construction, or expansion of a runway commenced after January 1, 1980.

(33) "New Industrial or Commercial Noise Source" means any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the industrial or commercial noise source in question.

(34) "New Motor Sports Facility" is any permanent motor sports facility for which construction or installation was commenced after January 1, 1982. Any recreational park or similar facility which initiates sanctioned racing after this date shall be considered a new motor sports facility.

(35) "New Motor Vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the new motor vehicle for purposes other than resale. The model year of such vehicle shall be the year so specified by the manufacturer, or if not so specified, the calendar year in which the new motor vehicle was manufactured.

(36) "Noise Impact Boundary" means a contour around the airport, any point on which is equal to the airport noise criterion.

(37) "Noise Level" means weighted sound pressure level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA.

(38) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.

(39) "Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified octave band. The reference pressure is 20 micropascals (20 micronewtons per square meter).

(40) "Off-Road Recreational Vehicle" means any motor vehicle, including water craft, used off public roads for recreational purposes. When a road vehicle is operated off-road the vehicle shall be considered an off-road recreational vehicle if it is being operated for recreational purposes.

(41) "One-Third Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified one-third octave band at the preferred frequencies. The reference pressure is 20 micropascals (20 micronewtons per square meter).

(42) "Open Course Motorcycle Racing Vehicle" means any motorcycle racing vehicle that is operated in competition on an open course motor sports facility, i.e., where public access is not generally restricted. This definition is intended to include the several types of motorcycles such as "enduro" and "cross country" that are used in events held in trail or other off-road environments.

(43) "Oval Course Racing Vehicle" means any racing vehicle, not a motorcycle and not a sports car, which is operated upon a closed, oval-type motor sports facility.

(44) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatever.

(45) "Practice Sessions" means any period of time during which racing vehicles are operated at a motor sports facility, other than during racing events. Driver training sessions or similar activities which are not held in anticipation of a subsequent racing event, and which include only vehicles with a stock exhaust system, shall not be considered practice sessions.

(46) "Preferred Frequencies" means those mean frequencies in Hertz preferred for acoustical measurements which for this purpose shall consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1000, 1250, 1600, 2000, 2500, 3150, 4000, 5000, 6300, 8000, 10,000, 12,500.

(47) "Previously Unused Industrial or Commercial Site" means property which has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property. Agricultural activities and silvicultural activities generating infrequent noise emissions shall not be considered as industrial or commercial operations for the purposes of this definition.

(48) "Propulsion Noise" means that noise created in the propulsion of a motor vehicle. This includes, but is not limited to, exhaust system noise, induction system noise, tire noise, cooling system noise, aerodynamic noise, and, where appropriate in the test procedure, braking system noise. This does not include noise created by road vehicle auxiliary equipment such as power take-offs and compressors.

(49) "Public Roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof in this state used by the public or dedicated or appropriated to public use.

(50) "Quiet Area" means any land or facility designated by the Commission as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater. The Department shall submit areas suggested by the public as quiet areas, to the Commission, with the Department's recommendation.

(51) "Racing Events" means any time, speed or distance competition using motor vehicles, conducted under a permit issued by the governmental authority having jurisdiction or under the auspices of a recognized sanctioning body. This definition includes, but is not limited to, events on the surface of land and water. Any motor sports event not meeting this definition shall be subject to the ambient noise limits of OAR 340-035-0030(1)(d).

(52) "Racing Vehicle" means any Motor Vehicle that is designed to be used exclusively in Racing Events or any New Motor Vehicle that has not been certified by its manufacturer as meeting the applicable noise limits of OAR 340-035-0025 or any vehicle participating in or practicing for a Racing Event.

(53) "Recreational Park" means a facility open to the public for the operation of off-road recreational vehicles.



(54) "Road Vehicle" means any motor vehicle registered for use on public roads, including any attached trailing vehicles.

(55) "Road Vehicle Auxiliary Equipment" means those mechanical devices which are built in or attached to a road vehicle and are used primarily for the handling or storage of products in that motor vehicle. This includes, but is not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, blowers, and other mechanical devices.

(56) "Sound Pressure Level" (SPL) means 20 times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. SPL is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter).

(57) "Special Motor Racing Event" means any racing event in which a substantial or significant number of out-of-state racing vehicles are competing or any event which has a special significance to the community and which has been recommended as a special motor racing event by the motor sports advisory committee and approved by the Department.

(58) "Sports Car Racing Vehicle" means any racing vehicle which meets the requirements and specifications of the competition rules of any sports car organization.

(59) "Statistical Noise Level" means the noise level which is equalled or exceeded a stated percentage of the time. An L10 = 65 dBA implies that in any hour of the day 65 dBA can be equalled or exceeded only 10% of the time, or for 6 minutes.

(60) "Stock Exhaust System" means an original equipment manufacturer exhaust system or a replacement for original equipment for a street legal vehicle whose noise emissions do not exceed those of the original equipment.

(61) "Temporary Autocross or Solo Course" means any area upon which a paved course motor sports facility is temporarily established. Typically such courses are placed on parking lots, or other large paved areas, for periods of one or two days.

(62) "Top Fuel-Burning Drag Racing Vehicle" means a drag racing vehicle that operates using principally alcohol (more than 50 percent) or utilizes nitromethane as a component of its operating fuel and commonly known as top fuel and funny cars.

(63) "Trackside" means a sound measuring point of 50 feet from the racing vehicle and specified in Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPCS-35.

(64) "Warning Device" means any device which signals an unsafe or potentially dangerous situation.

(65) "Watercraft Racing Vehicle" means any racing vehicle which is operated upon or immediately above the surface of water.



(66) "Well Maintained Muffler" means a device or combination of devices which effectively decreases the sound energy of internal combustion engine exhaust without a muffler by a minimum of 5 dBA at trackside. A well maintained muffler shall be free of defects or modifications that reduce its sound reduction capabilities. Each outlet of a multiple exhaust system shall comply with the requirements of this subsection, notwithstanding the total engine displacement versus muffler length requirements. Such a muffler shall be a:

(a) Reverse gas flow device incorporating a multitube and baffle design; or a

(b) Perforated straight core device, fully surrounded from beginning to end with a sound absorbing medium, not installed on a rotary engine:

(A) At least 20 inches in inner core length when installed on any drag race engine exceeding 1600 cc (96.7 cubic inches) displacement; or

(B) At least 12 inches in inner core length when installed on any non-motorcycle drag race engine equal to or less than 1600 cc (96.7 cubic inches) displacement; or

(C) At least 6 inches in inner core length and installed at the outlet end of any four-cycle motorcycle drag race engine; or

(D) At least 8 inches in inner core length when installed on any two-cycle motorcycle drag race engine; or an

(c) Annular swirl flow (auger-type) device of:

(A) At least 16 inches in swirl chamber length when installed on any drag race engine exceeding 1600 cc (96.7 cubic inches) displacement; or

(B) At least 10 inches in swirl chamber length when installed on any drag race engine equal to or less than 1600 cc (96.7 cubic inches) displacement; or a

(d) Stacked 360° diffuser disc device; or a

(e) Turbocharger; or a

(f) Go-kart muffler as defined by the International Karting Federation as specified in Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPC-35; or an

(g) Original equipment manufacturer motorcycle muffler when installed on a motorcycle model such muffler was designated for by the manufacturer; or

(h) Boat motor whose exhaust exits beneath the water surface during operation; or a

(i) Formula Vee four-into-one header/collector when installed on a Formula Vee sports car racing vehicle; or a

(j) Hughes-type Racing muffler; or

(k) Any other device demonstrated effective and approved by the motor sports advisory committee and the Department.

[ED. NOTE: Tables and documents referenced are not included in rule text. Click [here](#) for PDF copy of table(s) and document(s).]

[LINK TO NPCS 35](#)

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 77, f. 9-5-74, ef. 9-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77; DEQ 33-1979, f. & ef. 11-27-79; DEQ 17-1980, f. & ef. 5-28-80; DEQ 33-1980, f. 12-2-80, ef. 1-1-82; DEQ 7-1983, f. & ef. 4-22-83

**340-035-0025**

### **Noise Control Regulations for the Sale of New Motor Vehicles**

#### **(1) Standards and Regulations:**

(a) No person shall sell or offer for sale any new motor vehicle designated in this rule which produces a propulsion noise exceeding the noise limits specified in **Table 1**, except as otherwise provided in these rules.

(b) Subsequent to the adoption of a Federal Environmental Protection Agency procedure to determine sound levels of passenger cars and light trucks, or a nationally accepted procedure for these vehicles not similar to those specified and approved under subsection (2)(a) of this rule, the Department shall conduct an evaluation under such new procedure.

(c) After an appropriate evaluation of noise emission data measured under the procedure specified under subsection (1)(b) of this rule, the Department shall make recommendations to the Commission on the adequacy of the procedure and the necessity of amendments to this rule for incorporation of the procedure and associated standards.

(d) No person shall sell or offer to sell any new motorcycle, new motorcycle exhaust system or new motorcycle exhaust system component manufactured after January 1, 1983 unless the motorcycle, exhaust system, or exhaust component is properly labeled or marked in accordance with federal noise regulations specified in Part 205 **Subpart E** of **Title 40** of the **Code of Federal Regulations**.

#### **(2) Measurement:**

(a) Sound measurements shall conform to test procedures adopted by the Commission in **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)**, or to standard

methods approved in writing by the Department. These measurements will generally be carried out by the motor vehicle manufacturer on a sample of either prototype or production vehicles. A certification program shall be devised by the manufacturer and submitted to the Department for approval within 60 days after the adoption of this rule;

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise level tests and measurements on new motor vehicles being offered for sale. Therefore, when requested by the Department a new motor vehicle dealer or manufacturer shall cooperate in reasonable noise testing of a specific class of motor vehicle being offered for sale.

(3) Manufacturer's Certification:

(a) Prior to the sale of or offer for sale of any new motor vehicle designated in **Table 1**, the manufacturer or a designated representative shall certify in writing to the Department that vehicles listed in Table 1 made by that manufacturer and offered for sale in the State of Oregon meet applicable noise limits. Such certification will include a statement by the manufacturer that:

(A) The manufacturer has tested sample or prototype vehicles;

(B) That such samples or prototypes met applicable noise limits when tested in accordance with the procedures specified;

(C) That vehicles offered for sale in Oregon are substantially identical in construction to such samples or prototypes.

(b) Nothing in this rule shall preclude the Department from obtaining specific noise measurement data gathered by the manufacturer on prototype or production vehicles for a class of vehicles for which the Department has reasonable grounds to believe is not in conformity with the applicable noise limits.

(4) Exceptions: Upon prior written request from the manufacturer or designated representative, the Department may authorize an exception to this noise rule for a class of motor vehicles, if it can be demonstrated to the Department that for that specific class a vehicle manufacturer has not had adequate lead-time or does not have the technical capability to either bring the motor vehicle noise into compliance or to conduct new motor vehicle noise tests.

(5) Exemptions:

(a) All racing vehicles, except racing motorcycles and racing motorboats, shall be exempt from the requirements of this rule provided that such vehicles are operated only at facilities used for sanctioned racing events;

(b) Racing motorcycles and racing motorboats shall be exempt from the requirements of this rule provided that racing motorcycles are operated only at facilities used for sanctioned racing

events, racing motorboats are operated only at areas designated by the State Marine Board for testing or at an approved racing event, and the following conditions are complied with:

(A) Prior to the sale of a racing motorcycle or racing motorboat, the prospective purchaser shall file a notarized affidavit with the Department, on a Departmentally approved form, stating that it is the intention of such prospective purchaser to operate the vehicle only at facilities used for sanctioned racing events; and

(B) No racing vehicle shall be displayed for sale in the State of Oregon without notice prominently affixed thereto:

(i) That such vehicle will be exempt from the requirements of this rule only upon demonstration to the Department that the vehicle will be operated only at facilities used for sanctioned racing events, and

(ii) That a notarized affidavit will be required of the prospective purchaser stating that it is the intention of such prospective purchaser to operate the vehicle only at facilities used for sanctioned racing events; and

(C) No racing vehicle shall be locally advertised in the State of Oregon as being for sale without notice included:

(i) Which is substantially similar to that required in subparagraph (B)(i) and (ii) of this subsection; and

(ii) Which is unambiguous as to which vehicle such notice applies.



**OAR 340-035-0025**  
**Table 1**  
**New Motor Vehicle Standards**  
**Moving test at 50 feet (15.2 meters)**

Effective for	Maximum Noise Level (dBA)
<b>Motorcycles</b>	
1975 Model	86
1976 Model	83
1977-1982 Models	81
1983-1985 Models built after December 31, 1982	83
Moped Models built after December 31, 1982	70
<b>Off-road models with engine displacements of 170cc and lower</b>	
1983-1985 Models built after December 31, 1982	83
1983-1985 Models built after December 31, 1985	80
<b>Off road models with engine displacement greater than 170cc</b>	
1983-1985 Models built after December 31, 1982	86
1983-1985 Models built after December 31, 1985	82
<b>Snowmobiles as defined in ORS 481.048</b>	
1975 Models	82
Models after 1975	78
<b>Trucks and Buses in excess of 10,000 lbs. (4536 kg) GVWR</b>	
1975 Model	82
1976-1981 Models or Models manufactured after Jan. 1, 1978 and before Jan. 1, 1986	83
Models manufactured after Jan. 1, 1986, and before (Reserved)	---
Models manufactured after (Reserved)	
<b>Automobiles, light trucks and all other road vehicles</b>	
1975 Model	83
1976-1978 Models	83
Models after 1978	80
<b>Motorboats</b>	
Models offered for sale after June 30, 1980	82

[LINK TO NPCS 21](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. [Click here for PDF copy of table\(s\) and document\(s\).](#)]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77; DEQ 143, f. & ef. 9-30-77; DEQ 146, f. & ef. 11-3-77; DEQ 18-1978, f. & ef. 12-1-78; DEQ 20-1978, f. & ef. 12-27-78; DEQ 3-1979, f. & ef. 2-2-79; DEQ 10-1980, f. & ef. 4-3-80; DEQ 17-1980, f. & ef. 5-28-80; DEQ 13-1982, f. & ef. 7-21-82; DEQ 7-1983, f. & ef. 4-22-83

**340-035-0030**

**Noise Control Regulations For In-Use Motor Vehicles**

(1) Standards and Regulations:

(a) Road Vehicles:

(A) No person shall operate any road vehicle which exceeds the noise level limits specified in **Table 2** or in such a manner to exceed the noise level limits specified in Table 3, except as otherwise provided in these rules.

(B) No person shall operate a road vehicle with any of the following defects:

(i) No muffler;

(ii) Leaks in the exhaust system;

(iii) Pinched outlet pipe.

(C) Non-conforming "classic" and other "special interest" vehicles may be granted an exception to this rule, pursuant to OAR 340-035-0010, for the purpose of maintaining authentic equipment.

(b) Off-Road Recreational Vehicles:

(A) No person shall operate any off-road recreational vehicle which exceeds the stationary noise level limits specified in **Table 4** or in such a manner as to exceed the moving vehicle noise level limits specified in **Table 4**;

(B) No person shall operate an off-road recreational vehicle with any of the following defects:

- (i) No muffler;
- (ii) Leaks in the exhaust system;
- (iii) Pinched outlet pipe.

(c) Trucks Engaged in Interstate Commerce. Motor vehicles with a GVWR or GCWR in excess of 10,000 pounds which are engaged in interstate commerce by trucking and are regulated by **Part 202** of **Title 40** of the **Code of Federal Regulations**, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-574, shall be:

- (A) Free from defects which adversely affect sound reduction;
- (B) Equipped with a muffler or other noise dissipative device;
- (C) Not equipped with any "cut-out" devices, "by-pass" devices, or any other similar devices; and
- (D) Not equipped with any tire which as originally manufactured or newly retreaded has a tread pattern composed primarily of cavities in the tread, excluding sipes and local chunking, not vented by grooves to the tire shoulder or vented circumferentially to each other around the tire.

(d) Ambient Noise Limits:

(A) No person shall cause, allow, permit, or fail to control the operation of motor vehicles, including motorcycles, on property which he owns or controls, nor shall any person operate any such motor vehicle if the operation thereof increases the ambient noise level such that the appropriate noise level specified in **Table 5** is exceeded as measured from either of the following points, if located within 1,000 feet (305 meters) of the motor vehicle:

- (i) Noise sensitive property; or
- (ii) A quiet area.

(B) Exempt from the requirements of this section shall be:

- (i) Motor vehicles operating in racing events;
- (ii) Motor vehicles initially entering or leaving property which is more than 1,000 feet (305 meters) from the nearest noise sensitive property or quiet area;
- (iii) Motor vehicles operating on public roads; and
- (iv) Motor vehicles operating off-road for non-recreational purposes.

(e) Auxiliary Equipment Noise Limits:

(A) No person shall operate any road vehicle auxiliary equipment which exceeds the noise limits specified in **Table 6**, except as otherwise provided in these rules;

(B) No person shall cause, allow, permit, or fail to control the operation of any road vehicle auxiliary equipment that exceeds 50 dBA for more than 30 minutes between 10 p.m. and 7 a.m. at any appropriate noise sensitive property measurement point as specified in OAR 340-035-0035(3)(b).

(f) Motorcycles manufactured after December 31, 1982 to Federal Noise Regulations (**40 CFR Part 205**):

(A) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, other than for the purposes of maintenance, repair, or replacement of any device or element of design incorporated in the motorcycle for the purpose of noise control;

(B) No person shall remove or deface any noise label or mark required by federal law which is affixed to any motorcycle or motorcycle part for purposes of identifying the motorcycle or motorcycle part as a federally regulated product;

(C) No person shall operate any road or off-road motorcycle manufactured to federal noise law that does not bear a label or mark on the exhaust system that matches the model specific code of the motorcycle on which the system is installed;

(D) No person shall operate, nor shall any person cause, allow, permit or fail to control the operation of any competition motorcycle identified for "competition use only" by the noise label or mark required by federal law on any property other than a motor sports facility in a practice session or a racing event;

(E) No person shall operate, nor shall any person cause, allow, permit or fail to control the operation of any motorcycle fitted with an exhaust system or exhaust system component identified for "competition motorcycles only" by the noise label or mark required by federal law on any property other than a motor sports facility in a practice session or a racing event.

(2) Measurement. Sound measurement shall conform to test procedures adopted by the Commission in **Sound Measurement Procedures Manual (NPCS-1)** and **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)** or to standard methods approved in writing by the Department.

(3) Exemptions:

(a) Motor vehicles registered as antique or historical motor vehicles licensed in accordance with ORS 481.205(4) are exempt from these regulations;

(b) Motor vehicle warning devices are exempt from these regulations;



(c) Vehicles equipped with at least two snowtread tires are exempt from the noise limits of **Table 3**;

(d) Motor vehicles described in subsection (1)(c) of this rule, which are demonstrated by the operator to be in compliance with the noise levels in Table 3, for operation greater than 35 mph, are exempt from these regulations;

(e) Auxiliary equipment operated on construction sites or in the maintenance of capital equipment or to avoid or reduce the severity of accidents or operated on a farm for agricultural purposes or operated on forest land as defined in subsection (1) of ORS 526.324 for activities related to the growing or harvesting of forest tree species are exempt from these regulations.

(4) Equivalency:

(a) The in-use motor vehicle standards specified in **Table 2** and **3** have been determined by the Department to be substantially equivalent to the 25 foot stationary test standards set forth in 1977 Oregon, Laws, Chapter 273;

(b) Tests shall be conducted according to the procedures in **Motor Vehicle Sound Measurement Procedures Manual (NPCS-21)** or to standard methods approved in writing by the Department.



# OAR 340-035-0030

Table 2

## In-Use Road Vehicle Standards Stationary Test

Model Year	Maximum Noise Level (dBA)	Minimum Distance from Vehicle to Measurement Point
<b>All Vehicles Described in ORS 481.205(2)</b>		
Before 1976	94	25 feet (7.6 meters)
1976 and after	91	25 feet (7.6 meters)
<b>All Other Trucks in Excess of 8,000 pounds (3629 kg.) GVRW</b>		
Before 1976	94	25 feet (7.6 meters)
1976-1981	91	25 feet (7.6 meters)
After 1981	88	25 feet (7.6 meters)
<b>Motorcycles</b>		
1975 and Before	102	20 inches (1/2 meter)
After 1975	99	20 inches (1/2 meter)
<b>Front-engine Automobiles, Light Trucks, All Other Front-engine Road Vehicles</b>		
All	95	20 inches (1/2 meter)
<b>Rear-engine Automobiles, Light Trucks and All Other Front-engine Road Vehicles</b>		
All	95	20 inches (1/2 meter)
<b>Buses as Defined Under ORS 481.030</b>		
Before 1976	94	25 feet (7.6 meters)
1976 and After	91	25 feet (7.6 meters)



## OAR 340-035-0030

**Table 4**

### Off-Road Recreational Vehicle Standards

#### Allowable Noise Limits

Model Year	Maximum Noise Level (dBA and distance from vehicle to measuring point)	
	Stationary Test 20 inches (.5 meters)	Moving Test at 50 feet (15.2 meters)
<b>Motorcycles</b>		
1975 and before	102	85
After 1975	99	82
<b>Snowmobiles</b>		
1971 and before	---	86
1972-1975	---	84
After 1975	---	80
<b>Boats</b>		
Underwater exhaust - all	100	84
Atmosphere exhaust - all	100	84
<b>All Others</b>		
Front engine - all	95	78
Mid and Rear Engines - all	97	78




## OAR 340-035-0030

**Table 5**

### Ambient Standards for Vehicles Operated Near Noise Sensitive Property Allowable Noise Limits

Time	Maximum Noise Level
7:00 a.m. – 10:00 p.m.	60
10:00 p.m. – 7:00 a.m.	55

 <b>OAR 340-035-0030</b> <b>Table 6</b> <b>Auxiliary Equipment Driven by Primary Engine</b> <b>Noise Standards</b> <b>Stationary Test at 50 feet (15.2 meters) or Greater</b>	
<b>Model Year</b>	<b>Maximum Noise Level dBA</b>
Before 1976	88
1976-1978	85
After 1978	82

[LINK TO NPCS 1](#)

[LINK TO NPCS 21](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. [Click here for PDF copy of table\(s\) and document\(s\).](#)]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74; DEQ 119, f. & ef. 9-1-76; DEQ 135, f. & ef. 6-7-77;

DEQ 147(Temp), f. & ef. 12-1-77; DEQ 2-1978, f. & ef. 3-1-78; DEQ 7-1983, f. & ef. 4-22-83

### **340-035-0035**

#### **Noise Control Regulations for Industry and Commerce**

##### **(1) Standards and Regulations:**

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 7**, except as otherwise provided in these rules.

##### **(b) New Noise Sources:**

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 8**, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind

turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

(B) New Sources Located on Previously Unused Site:

(i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

(iii) For noise levels generated or caused by a wind energy facility:

(I) The increase in ambient statistical noise levels is based on an assumed background L50 ambient noise level of 26 dBA or the actual ambient background level. The person owning the wind energy facility may conduct measurements to determine the actual ambient L10 and L50 background level .

(II) The "actual ambient background level" is the measured noise level at the appropriate measurement point as specified in subsection (3)(b) of this rule using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with windspeed measurements of hub height conditions at the nearest wind turbine location. "Actual ambient background level" does not include noise generated or caused by the wind energy facility.

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA (but not above the limits specified in Table 8), if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L10 or L50 on the sensitive property by more than 10 dBA at the appropriate measurement point.

(IV) For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise level of 26 dBA or to the actual

ambient background L10 and L50 noise level, if measured. The facility complies with the noise ambient background standard if this comparison shows that the increase in noise is not more than 10 dBA over this entire range of wind speeds.

(V) For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when the facility's nearest wind turbine is operating over the entire range of wind speeds between cut-in speed and the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA or to the actual ambient background L10 and L50 noise level, if measured, is not more than 10 dBA over this entire range of wind speeds.

(VI) For purposes of determining whether a proposed wind energy facility would satisfy the **Table 8** standards, noise levels at the appropriate measurement point are predicted by using the turbine's maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all of the proposed wind facility's turbines are operating at the maximum sound power level.

(VII) For purposes of determining whether an operating wind energy facility satisfies the **Table 8** standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility's nearest wind turbine is operating at the windspeed corresponding to the maximum sound power level and no turbine that could contribute to the noise level is disabled.

(c) Quiet Areas. No person owning or controlling an industrial or commercial noise source located either within the boundaries of a quiet area or outside its boundaries shall cause or permit the operation of that noise source if the statistical noise levels generated by that source exceed the levels specified in **Table 9** as measured within the quiet area and not less than 400 feet (122 meters) from the noise source.

(d) Impulse Sound. Notwithstanding the noise rules in **Tables 7** through 9, no person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the sound pressure levels specified below, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule:

(A) Blasting. 98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.

(B) All Other Impulse Sounds. 100 db, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.

(e) Octave Bands and Audible Discrete Tones. When the Director has reasonable cause to believe that the requirements of subsection (1)(a), (b), or (c) of this rule do not adequately

protect the health, safety, or welfare of the public as provided for in ORS Chapter 467, the Department may require the noise source to meet the following rules:

(A) Octave Bands. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceeds applicable levels specified in **Table 10**.

(B) One-third Octave Band. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

(i) 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(ii) 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(iii) 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;

(iv) This rule shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in Table 10 for the octave band which contains such one-third octave band.

(2) Compliance. Upon written notification from the Director, the owner or controller of an industrial or commercial noise source operating in violation of the adopted rules shall submit a compliance schedule acceptable to the Department. The schedule will set forth the dates, terms, and conditions by which the person responsible for the noise source shall comply with the adopted rules.

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures as are approved in writing by the Department;

(b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:

(A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;

(B) That point on the noise sensitive property line nearest the noise source.

(4) Monitoring and Reporting:

(a) Upon written notification from the Department, persons owning or controlling an industrial or commercial noise source shall monitor and record the statistical noise levels and operating times of equipment, facilities, operations, and activities, and shall submit such data to the Department in the form and on the schedule requested by the Department. Procedures for such measurements shall conform to those procedures which are adopted by the Commission and set forth in Sound Measurement Procedures Manual (NPCS-1);

(b) Nothing in this rule shall preclude the Department from conducting separate or additional noise tests and measurements. Therefore, when requested by the Department, the owner or operator of an industrial or commercial noise source shall provide the following:

(A) Access to the site;

(B) Reasonable facilities, where available, including but not limited to, electric power and ladders adequate to perform the testing;

(C) Cooperation in the reasonable operation, manipulation, or shutdown of various equipment or operations as needed to ascertain the source of sound and measure its emission.

(5) Exemptions: Except as otherwise provided in subparagraph (1)(b)(B)(ii) of this rule, the rules in section (1) of this rule shall not apply to:

(a) Emergency equipment not operated on a regular or scheduled basis;

(b) Warning devices not operating continuously for more than 5 minutes;

(c) Sounds created by the tires or motor used to propel any road vehicle complying with the noise standards for road vehicles;

(d) Sounds resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad only to the extent that such equipment or facility is regulated by pre-emptive federal regulations as set forth in Part 201 of Title 40 of the Code of Federal Regulations, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-576; but this exemption does not apply to any standard, control, license, regulation, or restriction necessitated by special local conditions which is approved by the Administrator of the EPA after consultation with the Secretary of Transportation pursuant to procedures set forth in Section 17(c)(2) of the Act;

(e) Sounds created by bells, chimes, or carillons;



(f) Sounds not electronically amplified which are created by or generated at sporting, amusement, and entertainment events, except those sounds which are regulated under other noise standards. An event is a noteworthy happening and does not include informal, frequent, or ongoing activities such as, but not limited to, those which normally occur at bowling alleys or amusement parks operating in one location for a significant period of time;

(g) Sounds that originate on construction sites.

(h) Sounds created in construction or maintenance of capital equipment;

(i) Sounds created by lawn care maintenance and snow removal equipment;

(j) Sounds generated by the operation of aircraft and subject to pre-emptive federal regulation. This exception does not apply to aircraft engine testing, activity conducted at the airport that is not directly related to flight operations, and any other activity not pre-emptively regulated by the federal government or controlled under OAR 340-035-0045;

(k) Sounds created by the operation of road vehicle auxiliary equipment complying with the noise rules for such equipment as specified in OAR 340-035-0030(1)(e);

(l) Sounds created by agricultural activities;

(m) Sounds created by activities related to the growing or harvesting of forest tree species on forest land as defined in subsection (1) of ORS 526.324.

(6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Department may authorize exceptions to section (1) of this rule, pursuant to rule 340-035-0010, for:


(a) Unusual and/or infrequent events;


(b) Industrial or commercial facilities previously established in areas of new development of noise sensitive property;


(c) Those industrial or commercial noise sources whose statistical noise levels at the appropriate measurement point are exceeded by any noise source external to the industrial or commercial noise source in question;


(d) Noise sensitive property owned or controlled by the person who controls or owns the noise source;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use.

<div>  <div> <b>OAR 340-035-0035</b>  <b>Table 7</b>  <b>Existing Industrial and Commercial Noise Source Standards</b>  <b>Allowable Statistical Noise Levels in Any One Hour</b> </div> </div>	
7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
L <sub>50</sub> – 55 dBA	L <sub>50</sub> – 50 dBA
L <sub>10</sub> – 60 dBA	L <sub>10</sub> – 55 dBA
L <sub>1</sub> – 75 dBA	L <sub>1</sub> – 60 dBA

<div>  <div> <b>OAR 340-035-0035</b>  <b>Table 8</b>  <b>New Industrial and Commercial Noise Source Standards</b>  <b>Allowable Statistical Noise Levels in Any One Hour</b> </div> </div>	
7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
L <sub>50</sub> – 55 dBA	L <sub>50</sub> – 50 dBA
L <sub>10</sub> – 60 dBA	L <sub>10</sub> – 55 dBA
L <sub>1</sub> – 75 dBA	L <sub>1</sub> – 60 dBA

 <b>OAR 340-035-0035</b> <b>Table 9</b> <b>Industrial and Commercial Noise Source</b> <b>Standards for Quiet Areas</b> <b>Allowable Statistical Noise Levels in Any One Hour</b>		
	7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
L <sub>50</sub>	50 dBA	45 dBA
L <sub>10</sub>	55 dBA	50dBA
L <sub>1</sub>	60 dBA	55dBA

 <b>OAR 340-035-0035</b> <b>Table 10</b> <b>Median Octave Band Standards</b> <b>For Industrial and Commercial Noise Sources</b> <b>Allowable Octave Band Sound Pressure Levels</b>		
Octave Band Frequency (Hz)	7:00 a.m. – 10:00 p.m.	10:00 p.m. – 7:00 a.m.
31.5	68	65
63	65	62
125	61	56
250	55	50
500	52	46
1000	49	43
2000	46	40
4000	43	37
8000	40	34

[LINK TO NPCS 1](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. [Click here for PDF copy of table\(s\) and document\(s\).](#)]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 77, f. 9-5-74, ef. 9-25-74; DEQ 135, f. & ef. 6-7-77; DEQ 8-1980, f. & ef. 3-11-80; DEQ 7-1983, f. & ef. 4-22-83; DEQ 5-2004, f. & cert. ef. 6-11-04

### **340-035-0040**

#### **Noise Control Regulations for Motor Sports Vehicles and Facilities**

##### **(1) Statement of Purpose:**

(a) The Commission finds that the periodic noise pollution caused by Oregon motor sports activities threatens the environment of citizens residing in the vicinity of motor sports facilities. To mitigate motor sports noise impacts, a coordinated statewide program is desirable to ensure that effective noise abatement programs are developed and implemented where needed. This abatement program includes measures to limit the creation of new noise impacts and the reduction of existing noise impacts to the extent necessary and practicable;

(b) Since the Commission also recognizes the need of Oregon's citizens to participate in recreational activities of their choice, these rules balance those citizen needs which may conflict when motor sports facilities are in operation. Therefore, a policy of continuing participation in standards development through the active cooperation of interested parties is adopted. The choice of these parties is to limit the noise emission levels of racing and recreational vehicles, to designate equipment requirements, and to establish appropriate hours of operation. It is anticipated that safety factors, limited technology, special circumstances, and special events may require exceptions to these rules in some instances; therefore, a mechanism to accommodate this necessity is included in this rule;

(c) This rule is designed to encourage the motor sports facility owner, the vehicle operator, and government to cooperate to limit and diminish noise and its impacts. These ends can be accomplished by encouraging compatible land uses and controlling and reducing the racing vehicle noise impacts on communities in the vicinity of motor sports facilities to acceptable levels;

(d) This rule is enforceable by the Department and civil penalties ranging from a minimum of \$25 to a maximum of \$500 may be assessed for each violation. The motor sports facility owner, the racing vehicle owner and the racing vehicle driver are held responsible for compliance with provisions of this rule. A schedule of civil penalties for noise control may be found under OAR 340-012-0052.

##### **(2) Standards:**

(a) Drag Racing Vehicle. No motor sports facility owner and no person owning or controlling a drag racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well maintained muffler;

(b) Oval Course Racing Vehicle. No motor sports facility owner and no person owning or controlling an oval course racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(c) Sports Car Racing Vehicle. No motor sports facility owner and no person owning or controlling a sports car racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(d) Closed Course Motorcycle Racing Vehicle. No motor sports facility owner and no person owning or controlling a closed course motorcycle racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside or 105 dBA at 20 inches (.5 meter) from the exhaust outlet during the stationary measurement procedure;

(e) Open Course Motorcycle Racing Vehicle. No motor sports facility owner and no person owning or controlling an open course motorcycle racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions do not exceed 105 dBA at 20 inches (.5 meter) from the exhaust outlet during the stationary measurement procedure;

(f) Four Wheel Drive Racing Vehicles. No motor sports facility owner and no person owning or controlling a four wheel drive racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(g) Watercraft Racing Vehicle. No motor sports facility owner and no person owning or controlling a watercraft racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside;

(h) Autocross or Solo Racing Vehicle. No motor sports facility owner and no person owning or controlling an autocross or solo racing vehicle shall cause or permit its operation on any temporary autocross or solo course unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 90 dBA at trackside. Autocross and solo events conducted on a permanent motor sports facility, such as a sports car or go-kart course, shall comply with the requirements for sports car racing vehicles specified in subsection (2)(c) of this rule;

(i) Go-Kart Racing Vehicle. No motor sports facility owner and no person owning or controlling a go-kart racing vehicle shall cause or permit its operation at any motor sports facility unless the vehicle is equipped with a properly installed and well-maintained muffler and noise emissions from its operation do not exceed 105 dBA at trackside.

(3) New Motor Sports Facilities. Prior to the construction or operation of any permanent new motor sports facility, the facility owner shall submit for Department approval the projected motor sports facility noise impact boundaries. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation. Upon approval of the boundaries, this information shall be submitted to the appropriate local planning unit and the Department of Land Conservation and Development for their review and appropriate action.

(4) Practice Sessions. Notwithstanding section (2) of this rule, all racing vehicles in order to operate in practice sessions, shall comply with a noise mitigation plan which shall have been submitted to and approved by the motor sports advisory committee and the Director. Such plans may be developed and submitted prior to each racing season. An approved plan may be varied with prior written approval of the Department.

(5) Recreational Park. When a motor sports facility is used as a recreational park for the operation of off-road recreational vehicles, the ambient noise limits of OAR 340-035-0030(1)(d) shall apply.

(6) Operations:

(a) General. No motor sports facility owner and no person owning or controlling a racing vehicle shall permit its use or operation at any time other than the following:

(A) Sunday through Thursday during the hours 8 a.m. to 10 p.m. local time; and

(B) Friday through Saturday, state and national holidays and the day preceding, not to exceed three consecutive days, during the hours 8 a.m. to 11 p.m. local time.

(b) Overruns. Each motor sports facility may overrun the specified curfew times, including the time specified in subsection (11)(c) of this rule, not to exceed 30 minutes, no more than six days per year due to conditions beyond the control of the owner. Each overrun shall be documented to the Department within ten days of the occurrence;

(c) Special Events. Any approved special motor racing event may also be authorized to exceed this curfew pursuant to subsection (12)(a) of this rule.

(d) Continued Special Events. Any approved special event that cannot be completed within established curfew times due to circumstances beyond the control of the owner, such as but not limited to oil spills and accidents, may be continued the following day under the same conditions provided in the special event exception. The Department shall be notified within ten days of any continued special event.

(7) Measurement and Procedures. All instruments, procedures and personnel involved in performing sound level measurements shall conform to the requirements specified in **Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPCS-35**, or to standard methods approved in writing by the Department.

(8) Monitoring and Reporting:

(a) It shall be the responsibility of the motor sports facility owner to measure and record the required noise level data as specified under subsections (2)(b) - (i) of this rule and the **Motor Race Vehicle and Facility Sound Measurement and Procedure Manual, NPCS-35**. The owner shall either keep such recorded noise data available for a period of at least one calendar year or submit such data to the Department for storage. Upon request the owner shall make such recorded noise data available to the Department;

(b) When requested by the Department, any motor sports facility owner shall provide the following:

(A) Free access to the facility;

(B) Free observation of noise level monitoring;

(C) Cooperation and assistance in obtaining the reasonable operation of any Racing Vehicle using the facility as needed to ascertain its noise emission level.

(9) Vehicle standards. No motor sports facility owner and no person owning or controlling a racing vehicle shall cause or permit a racing event or practice session unless the vehicle is equipped and operated in accordance with these rules.

(10) Vehicle Testing. Nothing in this section shall preclude the motor sports facility owner from testing or barring the participation of any racing vehicle for non-compliance with these rules.

(11) Exemptions:

(a) Any motor sports facility whose racing surface is located more than 2 miles from the nearest noise sensitive property shall be exempt from this rule;

(b) Any top fuel-burning drag racing vehicle shall be exempt from the requirements of subsection (2)(a) of this rule. No later than January 31, 1985 the Department shall report to the Commission on progress toward muffler technology development for this vehicle class and propose any necessary recommendations to amend this exemption;

(c) Operation of non-complying jet powered dragsters between the hours of 11 a.m. and 10 p.m.;

(d) Operation of non-muffled racing vehicles at practice sessions between 12 noon and 3 p.m. as part of an approved plan as required pursuant to section (4) of this rule.

(12) Exceptions. The Department shall consider the majority and minority recommendations of the motor sports advisory committee prior to the approval or denial of any exception to these rules. Exceptions may be authorized by the Department for the following pursuant to OAR 340-035-0010:

(a) Special motor racing events;

(b) Race vehicle or class of vehicles whose design or mode of operation makes operation with a muffler inherently unsafe or technically unfeasible;

(c) Motor sports facilities previously established in areas of new development of noise sensitive property;

(d) Noise sensitive property owned or controlled by a motor sports facility owner;

(e) Noise sensitive property located on land zoned exclusively for industrial or commercial use;

(f) Any motor sports facility owner or race sanctioning body that proposes a racing vehicle noise control program that accomplishes the intended results of the standards of section (2) of this rule, the measurement and procedures of section (7) of this rule, the monitoring and the reporting of section (8) of this rule;

(g) Any motor sports facility demonstrating that noise sensitive properties do not fall within the motor sports facility noise impact boundaries may be except from the curfew limits of section (6) of this rule and the monitoring and reporting requirements of section (8) of this rule;

(h) Any practice session for non-muffled racing vehicles that does not meet the exemption requirements specified in subsection (11)(d) of this rule.

(13) Motor Sports Advisory Committee Actions. The committee shall serve at the call of the chairman who shall be elected by the members in accordance with the rules adopted by the committee for its official action.

(14) Effective Date. These rules shall be effective January 1, 1982.

[LINK TO NPCCS 35](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. [Click here for PDF copy of table\(s\) and document\(s\).](#)]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 33-1980, f. 12-2-80, ef. 1-1-82; DEQ 7-1983, f. & ef. 4-22-83



**Noise Control Regulations for Airports**

**(1) Statement of Purpose:**

(a) The Commission finds that noise pollution caused by Oregon airports threatens the public health and welfare of citizens residing in the vicinity of airports. To mitigate airport noise impacts a coordinated statewide program is desirable to ensure that effective Airport Noise Abatement Programs are developed and implemented where needed. An abatement program includes measures to prevent the creation of new noise impacts or the expansion of existing noise impacts to the extent necessary and practicable. Each abatement program will primarily focus on airport operational measures to prevent increased, and to lessen existing, noise levels. The program will also analyze the effects of aircraft noise emission regulations and land use controls;

(b) The principal goal of an airport proprietor who may be required to develop an Airport Noise Abatement program under this rule should be to reduce noise impacts caused by aircraft operations, and to address in an appropriate manner the conflicts which occur within the higher noise contours;

(c) The Airport Noise Criterion is established to define a perimeter for study and for noise sensitive use planning purposes. It is recognized that some or many means of addressing aircraft/airport noise at the Airport Noise Criterion Level may be beyond the control of the airport proprietor. It is therefore necessary that abatement programs be developed, whenever possible, with the cooperation of federal, state and local governments to ensure that all potential noise abatement measures are fully evaluated;

(d) This rule is designed to encourage the airport proprietor, aircraft operator, and government at all levels to cooperate to prevent and diminish noise and its impacts. These ends may be accomplished by encouraging compatible land uses and controlling and reducing the airport/aircraft noise impacts on communities in the vicinity of airports to acceptable levels.

(2) Airport Noise Criterion. The criterion for airport noise is an Annual Average Day-Night Airport Noise Level of 55 dBA. The Airport Noise Criterion is not designed to be a standard for imposing liability or any other legal obligation except as specifically designated within this section.

**(3) Airport Noise Impact Boundary:**

(a) Air Carrier Airports. Within 12 months of designation, the proprietor of any Air Carrier Airport shall submit for Department approval, the existing airport Noise Impact Boundary. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation;

(b) Existing Non-Air Carrier Airports. After an unsuccessful effort to resolve a noise problem pursuant to section (5) of this rule, the Director may require the proprietor of any existing non-air carrier airport to submit for Department approval, all information reasonably necessary for the calculation of the existing airport Noise Impact Boundary. This information is specified in the Department's **Airport Noise Control Procedure Manual (NPCS-37)**, as approved by the Commission. The proprietor shall submit the required information within twelve months of receipt of the Director's written notification;

(c) New Airports. Prior to the construction or operation and any required local government land-use approval of any New Airport, the proprietor shall submit for Department approval the projected airport Noise Impact Boundary for the first full calendar year of operation. The data and analysis used to determine the boundary shall also be submitted to the Department for evaluation. The Department shall notify the appropriate local planning unit of the results of their evaluation;

(d) Airport Master Planning. Any airport proprietor who obtains funding to develop an airport Master Plan shall submit for Department approval an existing noise impact boundary and projected noise impact boundaries at five, ten, and twenty years into the future. The data and analysis used to determine the boundaries shall also be submitted to the Department for evaluation;

(e) Impact Boundary Approval. Within 60 days of the receipt of a completed airport noise impact boundary, the Department shall either consider the boundary approved or provide written notification to the airport proprietor of deficiencies in the analysis.

(4) Airport Noise Abatement Program and Methodology:

(a) Abatement Program. The proprietor of an existing or new airport whose airport Noise Impact Boundary includes Noise Sensitive Property, or may include Noise Sensitive Property, shall submit a proposed Airport Noise Abatement Program for Commission approval within 12 months of notification, in writing, by the Director. The Director shall give such notification when the Commission has reasonable cause to believe that an abatement program is necessary to protect the health, safety or welfare of the public following a public informational hearing on the question of such necessity. Reasonable cause shall be based upon a determination that:

(A) Present or planned airport operations cause or may cause noise impacts that interfere with noise sensitive use activities such as communication and sleep to the extent that the public health, safety or welfare is threatened;

(B) These noise impacts will occur on property presently used for noise sensitive purposes, or where noise sensitive use is permitted by zone or comprehensive plan; and

(C) It appears likely that a feasible noise abatement program may be developed.

(b) Program Elements. An Airport Noise Abatement Program shall consist of all of the following elements, but if it is determined by the Department that any element will not aid the development of the program, it may be excluded:

(A) Maps of the airport and its environs, and supplemental information, providing:

(i) Projected airport noise contours from the Noise Impact Boundary to the airport property line in 5 dBA increments under current year of operations and at periods of five, ten, and twenty years into the future with proposed operational noise control measures designated in paragraph (4)(b)(B);

(ii) All existing Noise Sensitive Property within the airport Noise Impact Boundary;

(iii) Present zoning and comprehensive land use plan permitted uses and related policies;

(iv) Physical layout of the airport including the size and location of the runways, taxiways, maintenance and parking areas;

(v) Location of present and proposed future flight tracks;

(vi) Number of aircraft flight operations used in the calculation of the airport noise levels. This information shall be characterized by flight track, aircraft type, flight operation, number of daytime and nighttime operations, and takeoff weight of commercial jet transports.

(B) An airport operational plan designed to reduce airport noise impacts at Noise Sensitive Property to the Airport Noise Criterion to the greatest extent practicable. The plan shall include an evaluation of the appropriateness and effectiveness of the following noise abatement operations by estimating potential reductions in the airport Noise Impact Boundary and numbers of Noise Sensitive Properties impacted within the boundary, incorporating such options to the fullest extent practicable into any proposed Airport Noise Abatement Program:

(i) Takeoff and landing noise abatement procedures such as thrust reduction or maximum climb on takeoff;

(ii) Preferential and priority runway use systems;

(iii) Modification in approach and departure flight tracks;

(iv) Rotational runway use systems;

(v) Higher glide slope angles and glide slope intercept altitudes on approach;

(vi) Displaced runway thresholds;

(vii) Limitations on the operation of a particular type or class of aircraft, based upon aircraft noise emission characteristics;

- (viii) Limitations on operations at certain hours of the day;
- (ix) Limitations on the number of operations per day or year;
- (x) Establishment of landing fees based on aircraft noise emission characteristics or time of day;
- (xi) Rescheduling of operations by aircraft type or time of day;
- (xii) Shifting operations to neighboring airports;
- (xiii) Location of engine run-up areas;
- (xiv) Times when engine run-up for maintenance can be done;
- (xv) Acquisition of noise suppressing equipment and construction of physical barriers for the purpose of reducing aircraft noise impact;
- (xvi) Development of new runways or extended runways that would shift noise away from populated areas or reduce the noise impact within the Airport Noise Impact Boundary.

(C) A proposed land use and development control plan, and evidence of good faith efforts by the proprietor to obtain its approval, to protect the area within the airport Noise Impact Boundary from encroachment by non-compatible noise sensitive uses and to resolve conflicts with existing unprotected noise sensitive uses within the boundary. The Plan is not intended to be a community-wide comprehensive plan; it should be airport-specific, and should be of a scope appropriate to the size of the airport facility and the nature of the land uses in the immediate area. Affected local governments shall have an opportunity to participate in the development of the plan, and any written comments offered by an affected local government shall be made available to the Commission. The Department shall review the comprehensive land use plan of the affected local governments to ensure that reasonable policies have been adopted recognizing the local government's responsibility to support the proprietor's efforts to protect the public from excessive airport noise. The plan may include, but not be limited to, the following actions within the specified noise impact zones:

- (i) Changes in land use through non-noise sensitive zoning and revision of comprehensive plans, within the Noise Impact Boundary (55 dBA);
- (ii) Influencing land use through the programming of public improvement projects within the Noise Impact Boundary (55 dBA);
- (iii) Purchase assurance programs within the 65 dBA boundary;
- (iv) Voluntary relocation programs within the 65 dBA boundary;

(v) Soundproofing programs within the 65 dBA boundary, or within the Noise Impact Boundary (55 dBA) if the governmental entity with land use planning responsibility desires, and will play a major role in implementation.

(vi) Purchase of land for airport use within the 65 dBA boundary;

(vii) Purchase of land for airport related uses within the 65 dBA boundary;

(viii) Purchase of land for non-noise sensitive public use within the Noise Impact Boundary (55 dBA);

(ix) Purchase of land for resale for airport noise compatible purposes within the 65 dBA boundary;

(x) Noise impact disclosure to purchaser within the Noise Impact Boundary (55 dBA);

(xi) Modifications to Uniform State Building Code for areas of airport noise impact within the Noise Impact Boundary (55 dBA).

(c) Federal Aviation Administration Concurrence. The proprietor shall use good faith efforts to obtain concurrence or approval for any portions of the proposed Airport Noise Abatement Program for which the airport proprietor believes that Federal Aviation Administration concurrence or approval is required. Documentation of each such effort and a written statement from FAA containing its response shall be made available to the Commission;

(d) Commission Approval. Not later than twelve months after notification by the Director pursuant to subsection (4)(a) of this rule, the proprietor shall submit a proposed Airport Noise Abatement Program to the Commission for approval. Upon approval, the abatement program shall have the force and effect of an order of the Commission. The Commission may direct the Department to distribute copies of the approved abatement program to interested federal, state and local governments, and to other interested persons, and may direct the Department to undertake such monitoring or compliance assurance work as the Commission deems necessary to ensure compliance with the terms of its order. The Commission shall base its approval or disapproval of a proposed Noise Abatement Program upon:

(A) The completeness of the information provided;

(B) The comprehensiveness and reasonableness of the proprietor's evaluation of the operational plan elements listed under paragraph (4)(b)(B) of this rule;

(C) The presence of an implementation scheme for the operational plan elements, to the extent feasible;

(D) The comprehensiveness and reasonableness of the proprietor's evaluation of land use and development plan elements listed under paragraph (4)(b)(C) of this rule;

(E) Evidence of good faith efforts to adopt the land use and development plan, or obtain its adoption by the responsible governmental body, to the extent feasible;

(F) The nature and magnitude of existing and potential noise impacts;

(G) Testimony of interested and affected persons; and

(H) Any other relevant factors.

(e) Program Renewal. No later than six months prior to the end of a five-year period following the Commission's approval, each current airport Noise Abatement Program shall be reviewed and revised by the proprietor, as necessary, and submitted to the Commission for consideration for renewal.

(f) Program Revisions. If the Director determines that circumstances warrant a program revision prior to the scheduled five year review, the Airport Proprietor shall submit to the Commission a revised program within 12 months of written notification by the Director. The Director shall make such determination based upon an expansion of airport capacity, increase in use, change in the types or mix of various aircraft utilizing the airport, or changes in land use and development in the impact area that were unforeseen in earlier abatement plans. Any program revision is subject to all requirements of this rule.

(5) Consultation. The Director shall consult with the airport proprietor, members of the public, the Oregon Departments of Transportation, Land Conservation and Development and any affected local government in an effort to resolve informally a noise problem prior to issuing a notification under subsections (3)(b), (4)(a) and (4)(f) of this rule.

(6) Noise Sensitive Use Deviations. The airport noise criterion is designed to provide adequate protection of noise sensitive uses based upon out-of-doors airport noise levels. Certain noise sensitive use classes may be acceptable within the airport Noise Impact Boundary if all measures necessary to protect interior activities are taken.

(7) Airport Noise Monitoring. The Department may request certification of the airport Noise Impact Boundary by actual noise monitoring, where it is deemed necessary to approve the boundary pursuant to subsection (3)(e) of this rule.

(8) Exceptions. Upon written request from the Airport Proprietor, the Department may authorize exceptions to this rule, pursuant to OAR 340-035-0010, for:

(a) Unusual or infrequent events;

(b) Noise sensitive property owned or controlled by the airport;

(c) Noise sensitive property located on land zoned exclusively for industrial or commercial use.

[LINK TO NPC 37](#)

[ED. NOTE: Tables and documents referenced are not included in rule text. [Click here for PDF copy of table\(s\) and document\(s\).](#)]

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 33-1979, f. & ef. 11-27-79; DEQ 7-1983, f. & ef. 4-22-83

### **340-035-0100**

#### **Variances**

(1) Conditions for Granting. The Commission may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation, or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

(2) Procedure for Requesting. Any person requesting a variance shall make his request in writing to the Department for consideration by the Commission and shall state in a concise manner the facts to show cause why such variance should be granted.

(3) Revocation or Modification. A variance granted may be revoked or modified by the Commission after a public hearing held upon not less than 20 days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the Commission a written request for such notification.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467.030

Hist.: DEQ 75, f. 7-25-74, ef. 8-25-74

### **340-035-0110**

#### **Suspension of Commission and Department Responsibilities**

In 1991, the Legislative Assembly withdrew all funding for implementing and administering ORS Chapter 467 and the Department's noise program. Accordingly, the Commission and the Department have suspended administration of the noise program, including but not limited to processing requests for exceptions and variances, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints. Similarly, the public's obligations to submit plans or certifications to the Department are suspended.

Stat. Auth.: ORS 467

Stats. Implemented: ORS 467

Hist.: DEQ 5-2004, f. & cert. ef. 6-11-04

DRAFT