



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

Aug. 31, 2023

Ballast Water 2023

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules – Edits Highlighted
- Draft Rules – Edits Included (final clean version)

Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

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Introduction

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

Request for Other Options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Overview

This rulemaking proposes to:

1. Remove the sunset date on DEQ's 'exchange+ treatment' requirement in order to prevent introductions of aquatic invasive species ahead of incoming federal rules that contain the same requirement,
2. Update the agency's definition of Pacific Coast Region to align with the definition used by California and federal regulators, and
3. Correct three minor errors in DEQ's current ballast water rules.

Procedural Summary

More information

Information about this rulemaking is on this rulemaking's web page: [Ballast Water 2023 rulemaking](#)

Public Hearings

DEQ plans to hold one virtual public hearing.

Hearing Detail

Date: Sept. 19, 2023, 3-4 p.m.

[Join by Zoom](#)

Instructions on how to join the meeting: [Instructions](#)

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. DEQ will accept comments by email, postal mail or verbally at the public hearing.

- **Email:** Send comments by email to: BallastWaterRules@deq.oregon.gov
- **Postal mail:** Oregon DEQ, Attn: Josh Emerson/Ballast Water Program, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
- **At public hearing:** 3 p.m., Tuesday, Sept. 19, 2023

Comment deadline

DEQ will consider comments on the proposed rules that DEQ receives by: 5 p.m., on Sept. 21, 2023.

Note for public university students

ORS 192.345(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, notify DEQ that you wish to keep your email address confidential.

Sign up for rulemaking notices

Get email or text updates about this rulemaking by either:

- Signing up through this link: [GovDelivery](#);
- Signing up on the rulemaking web site: [Ballast Water 2023 rulemaking](#).

What will happen next?

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

Proposed rules only become effective if EQC adopts them. DEQ's intended action is to present the proposed rule changes to the EQC as soon as possible after the earliest date on which the rule changes could take effect. DEQ intends to submit the proposed rule changes to the EQC on or after Oct. 20, 2023.

Statement of need

Proposed Rule or Topic	Discussion
340-143-0005	
What need would the proposed rule address?	Incorrect C.F.R. citation; statute requires update of rule
How would the proposed rule address the need?	Correction of C.F.R. citation; aligning with California, EPA, and Coast Guard on definition of Pacific Coast Region
How will DEQ know the rule addressed the need?	C.F.R. citation will be correct; Pacific Coast Region will be extended 5 degrees south
340-143-0020	
What need would the proposed rule address?	Presence of defunct email address
How would the proposed rule address the need?	Remove email address
How will DEQ know the rule addressed the need?	Email address will be removed
340-143-0050	
What need would the proposed rule address?	Incorrect Vibrio cholera naming convention; upcoming sunset date in rule
How would the proposed rule address the need?	Correction of Vibrio cholera naming convention; removal of sunset date
How will DEQ know the rule addressed the need?	Vibrio cholera serotypes will follow naming convention; sunset date will be removed

Rules affected, authorities, supporting documents

Lead division

Land Quality

Program or activity

Ballast Water

Chapter 340 action

Amend		
340-143-0005	340-143-0020	340-143-0050

Statutory Authority - ORS		
468.020	468.065	783.620 - 783.640

Statutes Implemented - ORS		
783.620 - 783.640		

Documents relied on for rulemaking

Document title	Document location
Management of Biological Invasions (2018) Volume 9, Issue 3: 309-321	https://doi.org/10.3391/mbi.2018.9.3.13
Environ. Sci. Technol., 2021, 55, 82-89.	https://dx.doi.org/10.1021/acs.est.0c05238?ref=pdf
Science of the Total Environment, 775 (2021) 145238	https://doi.org/10.1016/j.scitotenv.2021.145238
Ocean and Coastal Management, 199 (2021) 105296	https://doi.org/10.1016/j.ocecoaman.2020.105296
Conservation Letters 2022; 15:e12866	https://doi.org/10.1111/conl.12866
Journal of Applied Ecology, 2023; 60:193-204.	https://doi.org/10.1111/1365-2664.14321
Molecular Ecology (2023). 00, 1-14.	https://doi.org/10.1111/mec.16888

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

This rulemaking amends invasive species protection practices required of commercial vessels greater than 300 gross tons that intend to discharge ballast water while operating in state waters. Most affected vessels are owned and operated by large foreign businesses. 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 are dependent upon maritime commerce.

Statement of Cost of Compliance

State agencies

This rulemaking will not require additional resources for the DEQ, nor other state or federal agencies.

Local governments

This rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside Oregon waters, and therefore has no fiscal impact on local governments.

Public

This rulemaking would not impose a negative economic impact on the public. Rather, these rules are intended to protect the 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.

Large businesses - businesses with more than 50 employees

No significant economic impact is anticipated because of the proposed rules. The proposed rules do not impose fees or require the use or installation of new equipment or management practices. This rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside of Oregon. The current rule has been adopted federally for application to the entire Pacific coast, but not yet put into effect. Any fiscal impacts will be incurred due to the federal adoption of the rule. This rulemaking seeks to align DEQ rules with federal requirements.

Small businesses – businesses with 50 or fewer employees

No significant economic impact is anticipated because of the proposed rules. Our state ballast water management regulations establish a minimum vessel size criteria (>300 gross tons with ballast tanks) and exemptions for commercial fishing vessel whereby 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, and thus, under normal operational conditions, would not impose significant economic impacts, either directly or indirectly, to any small businesses.

ORS 183.336 - Cost of Compliance for Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

This rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside Oregon waters and therefore should have 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.

This rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside Oregon waters and therefore should have no fiscal impact on small businesses.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

This rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside of Oregon waters and therefore should have no fiscal impact on small businesses.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ did not involve small businesses directly in this rulemaking because this rulemaking only affects commercial vessels greater than 300 gross tons arriving from outside of Oregon waters and therefore should have no fiscal impact on small businesses. Some of the advisory committee members represent organizations that may have small businesses as part of the membership.

During the public comment period DEQ will send notifications about this rulemaking to potentially impacted companies, including small businesses, giving them the opportunity to provide comments on the proposed rules.

Documents relied on for fiscal and economic impact

Document title	Document location
Vessel Incidental Discharge Act (2018)	33 U.S.C. § 1322(p)

Advisory committee fiscal review

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 adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement, and its findings are stated in the approved minutes dated Aug. 24, 2023.

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

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 rule amendments will have no impact on the supply of housing or land for residential development. The proposed rule amendments will not impact the cost of labor or administration related to such development.

Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

This rulemaking is not expected to affect racial equity in the state. The focus of the rule is a vessel operating procedure that is already currently required of the vessels subject to the rule. The exchange of low-salinity ballast prior to treatment is required by both rule and statute to take place no less than 50 nautical miles from shore in a minority of cases, and at least 200 nautical miles from any shore in most voyages subject to the rule. Further, this rule is primarily focused on the prevention of an action (the introduction of invasive species via ballast water discharge) that would certainly affect lower-income communities disproportionately. The following is a short list of potential impacts being prevented by Oregon's ballast water exchange requirement.

Disproportionate impact on indigenous communities: ballast water discharge can introduce invasive species that can disrupt ecosystems and harm traditional food sources of indigenous communities who rely on fishing and harvesting from natural waters sources.

Unequal access to resources for monitoring and responding to invasive species: marginalized communities may not have access to the same resources or expertise as other communities to monitor and respond to invasive species, making them more vulnerable to the impacts of discharging unmanaged ballast water.

Health impacts: invasive species introduced through ballast water discharge can pose health risks to individuals who come into contact with contaminated water, such as recreational water users or those who rely on water sources for drinking or irrigation.

Economic impacts: invasive species can have significant economic impacts, including damage to fisheries and other industries that rely on water resources. These impacts can disproportionately affect marginalized communities who may already be economically disadvantaged.

Environmental Justice Considerations

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues.

As above, this rulemaking primarily focused on the prevention of an action (the introduction of invasive species via ballast water discharge). If ballast water discharge leads to the introduction/spread of species, that would certainly affect lower-income communities disproportionately. The following is a non-exhaustive list of these impacts.

Disproportionate impact on low-income communities: if ballast water discharge leads to the spread of invasive species, this can have a disproportionate impact on low-income communities that rely on fishing and other natural resources for their livelihoods. These communities may be particularly vulnerable to changes in fish populations or the introduction of new species that compete with native species.

Cultural impacts: some communities may have cultural or spiritual ties to the ocean and its ecosystems, and the introduction of invasive species can disrupt these traditional relationships. Additionally, ballast water discharge could have negative impacts on cultural sites, including burial grounds and other sacred areas.

Environmental degradation: the introduction of invasive species can cause significant environmental degradation, including the loss of habitat, changes in water quality, and alterations of the food chain. This can impact not only local aquatic life, but also the larger ecosystem, leading to cascading effects that can be difficult to predict.

Lack of representation in decision-making: communities that are most directly impacted by ballast water discharge may not have a voice in the decision-making process. This can lead to a lack of consideration for their concerns and needs and can result in decisions that do not adequately address the potential environmental justice implications of ballast water discharge.

Environmental Justice analysis

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

Federal relationship

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.

The proposed rules are not different from or in addition to federal requirements. This rulemaking removes a sunset date from DEQ's exchange plus treatment rule.

After Oregon adopted this rule, the Vessel Incidental Discharge Act ([33 U.S.C. § 1322\(p\)](#)) was signed into law in 2018. This law incorporates Oregon's rule for freshwater ballast and applies it to the entire Pacific Region.

However, the law is not expected to go into effect until 2026. As a result, the sunset date on Oregon's rule would create a gap in prevention of aquatic invasive species introduction. This rulemaking removes the sunset date from Oregon's rule, to prevent this gap until VIDA's equivalent rules are fully implemented.

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 statewide 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, objects, or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean 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.

EQC Prior Involvement

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

Advisory Committee Background

DEQ convened the Ballast Water Rulemaking 2023 advisory committee. The committee included representatives from the shipping industry, environmental advocacy groups, academia, and the regulatory community and met one time. The committee’s web page is located at: [Ballast Water 2023](#)

The committee members were:

Rulemaking Name Advisory Committee	
Name	Representing
Kate Mickelson	Columbia River Steamship Operators’ Association
Brien Flanagan (alternate)	Columbia River Steamship Operators’ Association
Carl Bertapelle	Portland Merchants Exchange
Ross McDonald	Sause Bros.
Blake Hamalainen	Port of Portland
Dick Vander Schaaf	The Nature Conservancy
Sarah Kidd (not present)	Lower Columbia Estuary Partnership
Catherine Corbett (alternate)	Lower Columbia Estuary Partnership
Catherine de Rivera	Portland State University
James Michelli (not present)	U.S. Coast Guard
Art Leskowich	U.S. Army Corps. of Engineers
Blaine Parker	Columbia River Inter-Tribal Fish Commission
Torey Wakeland (not present)	Confederated Tribes of Grand Ronde

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:
 - Rulemaking
 - DEQ Public Notices
 - Environmental Cleanup Program
- Added advisory committee announcements to DEQ’s calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee members voiced no opposition to the five amendments proposed as a part of this rulemaking. All discussions affirmed that the proposed changes were agreeable as currently drafted. RAC members that spoke on the record all voiced support of the removal of the sunset date in OAR 340-143-0050. No RAC members spoke against expanding the southern extent of the Pacific Coast Region, or against the correction of the three errors identified in the current rules.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Aug. 31, 2023 filing notice with the Oregon Secretary of State for publication in the September 2023 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Ballast Water 2023](#);
- Emailing approximately 24,000 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Environmental Cleanup Program
- Emailing the following key legislators required under [ORS 183.335](#):
 - Sen. Janeen Sollman, Chair, Senate Committee on Energy and Environment
 - Sen. Lynn Findley, Vice-Chair, Senate Committee on Energy and Environment
 - Sen. Jeff Golden, Senate Committee on Energy and Environment
 - Sen. Cedric Hayden, Senate Committee on Energy and Environment
 - Sen. Kate Lieber, Senate Committee on Energy and Environment
 - Rep. Pam Marsh, Chair, House Committee on Climate, Energy, and Environment
 - Rep. Bobby Levy, Vice-Chair, House Committee on Climate, Energy, and Environment
 - Rep. Emerson Levy, Vice-Chair, House Committee on Climate, Energy, and Environment
 - Rep. Tom Andersen, House Committee on Climate, Energy, and Environment
 - Rep. Ken Helm, House Committee on Climate, Energy, and Environment
 - Rep. Jason Kropf, House Committee on Climate, Energy, and Environment
 - Rep. Virgle Osborne, House Committee on Climate, Energy, and Environment
 - Rep. Mark Owens, House Committee on Climate, Energy, and Environment
 - Rep. Khanh Pham, House Committee on Climate, Energy, and Environment
 - Rep. Kim Wallan, House Committee on Climate, Energy, and Environment
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Accessibility Information

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Contact: 800-452-4011 | TTY: 711 | deqinfo@deq.state.or.us

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Visit DEQ's [Civil Rights and Environmental Justice page](#).



Draft Rules – Edits Highlighted

Ballast Water 2023

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

Division 143

BALLAST WATER MANAGEMENT

340-143-0005

Definitions

(1) Definitions defined under statute: This division uses the definitions for the following terms provided in ORS 783.625:

- (a) “Ballast water”;
- (b) “Cargo vessel”;
- (c) “Empty ballast tank”;
- (d) “Oil”;
- (e) “Open sea exchange”;
- (f) “Passenger vessel”;
- (g) “Sediment”;
- (h) “Ship”;
- (i) “Tank vessel”;
- (j) “Vessel”;
- (k) “Voyage”; and
- (l) “Waters of the State”.

(2) Definitions defined by administrative rule: This division uses the following terms as defined in this rule:

- (a) "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.
- (b) "Common Waters Zone" means the Pacific Coast of North America between 40 and 50 degrees north latitude.
- (c) "DEQ" means the Oregon Department of Environmental Quality.
- (d) "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~~2005.
- (e) "Exclusive Economic Zone" extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.
- (f) "High-risk Ballast Water" means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.
- (g) "Internal Waters of the State" means those waters of this state that do not have shared jurisdiction with an adjacent state.
- (h) "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.
- (i) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of ~~25~~20 degrees N latitude, ~~exclusive~~inclusive of the Gulf of California.
- (j) "Port" means any place to which a vessel is bound to anchor or moor.
- (k) "Saltwater flush" means to pump coastal ocean or open sea water, depending upon last ballast source location, into an empty ballast tank in a volume sufficient to ensure that after discharging the ballast water, the remaining residual ballast water and sediment has a salinity greater than or equal to 30 parts per thousand.
- (l) "Territorial Sea of the United States" means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

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

DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02

340-143-0020

Ballast Water Management: Reporting, Management Plans and Recordkeeping

(1) A vessel owner or operator covered by OAR chapter 340, division 143 must report ballast water management information to DEQ at least 24 hours before entering waters of the state. When the vessel's voyage is less than 24 hours in total duration, the report must be submitted prior to departing the vessel's port or place of departure. The report is required whether or not the owner or operator plans to discharge ballast water into waters of the state. Compliance with these reporting requirements may be met by sending the report to DEQ via e-mail, ~~(ballast.water@deq.state.or.us)~~ fax, or mail. Vessel owners or operators who rely on a third party to collect, forward or submit ballast water reporting forms are responsible for ensuring that DEQ receives the ballast water management information as required in this section. Electronic reporting must be submitted using methods and file formats approved by DEQ.

(2) The report must be submitted on a form acceptable to the U.S. Coast Guard pursuant to 33 CFR part 151, unless DEQ approves an alternative format in writing.

(3) If a vessel owner or operator alters or plans to alter its ballast water management for any reason after reporting its ballast water management information, the owner or operator must submit an amended ballast water management report to DEQ. An amended reporting form must be filed at the time of first known or predictable change of destination, and immediately upon completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(4) Any owner or operator failing to report ballast water management information as required by this rule must file the required report immediately upon discovering the violation.

(5) Vessel owners or operators must develop and maintain on board a ballast water management plan that is specifically developed for the vessel and that allows those responsible for the plan's implementation to understand and follow the vessel's ballast management strategy. The contents, training requirements and availability must be consistent with ballast water management plan regulations established by the U.S. Coast Guard under 33 CFR 151.2035a subpart D.

(6) Vessel owners or operators must record all ballast water and sediment management operations in the vessel's ballast water log, record book or other suitable documentation system.

(a) Content. Vessel owners or operators must maintain a version of the ballast water log, record book or other suitable documentation system in English on board the vessel that, at a minimum:

(A) Records each operation involving ballast water or sediment management;

(B) Describes each such operation, including the location and circumstances of, and the reason for, the operation;

(C) Records the exact time and position of the start and stop of the ballast water exchange or treatment operations for each tank; and

(D) Describes the nature and circumstances of any situation under which a safety exemption from ballast management requirements was declared.

(b) Availability. Vessel owners or operators must make the ballast water log or record book readily available for examination by DEQ at all reasonable times. The vessel owner or operator must transmit to DEQ any information about the vessel's ballast operations that DEQ requires.

(c) Retention period. The ballast water log or record book must be available on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(d) Required signatures. DEQ will require that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator or responsible officer attest to the accuracy of the information provided and certifies compliance with the vessel ballast water management plan.

(e) Alternative means of recording. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method must meet provisions of this section.

(f) Records Storage for unmanned barges. If no secure location is available to store records on unmanned barges, these vessel operators may meet provisions of this section by storing records on an associated tug or at other accessible locations and must provide logbook records to DEQ on request.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

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

DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02

340-143-0050

Ballast Water Management: 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 must also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand, or under circumstances when vessel operator is unable to verify ballast salinity. This requirement applies to ballast discharge to waters of the Columbia River, Coos Bay, or Yaquina Bay. Under these circumstances, vessel operators must conduct ballast exchange or saltwater flushing practices prior to treatment, 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 approved for shipboard use by the U.S. Coast Guard and meets a ballast discharge standard more stringent than the International Maritime Organization D-2 standards established under the 2004 Ballast Water Management Convention, provided 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; and

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

(i) One colony-forming unit of toxicogenic *Vibrio cholera* (serotypes ~~01-O1~~ and ~~0139-O139~~) 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), 340-143-0010(2)(c), 340-143-0010(2)(d), or 340-143-0010(2)(e), or

(c) DEQ authorizes a vessel's voyage an exemption from the exchange requirements portion of this rule per exemption request procedures established under OAR 143-0040 for circumstances where:

(A) Design specifications indicate that exchange is incompatible with treatment system or vessel piping configurations, or

(B) Conducting exchange prior to treatment represents a threat to the environment, crew, or vessel.

(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) Section (2) of this rule is no longer in effect after December 19, 2023. Before 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, or the potential need for continuation of this rule to prevent introductions of aquatic invasive species to Oregon waters.~~

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

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



State of Oregon Department of Environmental Quality

Draft Rules – Edits Incorporated

Ballast Water 2023

Division 143 BALLAST WATER MANAGEMENT

340-143-0005

Definitions

(1) Definitions defined under statute: This division uses the definitions for the following terms provided in ORS 783.625:

- (a) “Ballast water”;
- (b) “Cargo vessel”;
- (c) “Empty ballast tank”;
- (d) “Oil”;
- (e) “Open sea exchange”;
- (f) “Passenger vessel”;
- (g) “Sediment”;
- (h) “Ship”;
- (i) “Tank vessel”;
- (j) “Vessel”;
- (k) “Voyage”; and
- (l) “Waters of the State”.

(2) Definitions defined by administrative rule: This division uses the following terms as defined in this rule:

- (a) "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.

- (b) "Common Waters Zone" means the Pacific Coast of North America between 40 and 50 degrees north latitude.
- (c) "DEQ" means the Oregon Department of Environmental Quality.
- (d) "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 151.2005.
- (e) "Exclusive Economic Zone" extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.
- (f) "High-risk Ballast Water" means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.
- (g) "Internal Waters of the State" means those waters of this state that do not have shared jurisdiction with an adjacent state.
- (h) "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.
- (i) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 20 degrees N latitude, inclusive of the Gulf of California.
- (j) "Port" means any place to which a vessel is bound to anchor or moor.
- (k) "Saltwater flush" means to pump coastal ocean or open sea water, depending upon last ballast source location, into an empty ballast tank in a volume sufficient to ensure that after discharging the ballast water, the remaining residual ballast water and sediment has a salinity greater than or equal to 30 parts per thousand.
- (l) "Territorial Sea of the United States" means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

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

DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02

340-143-0020

Ballast Water Management: Reporting, Management Plans and Recordkeeping

(1) A vessel owner or operator covered by OAR chapter 340, division 143 must report ballast water management information to DEQ at least 24 hours before entering waters of the state. When the vessel's voyage is less than 24 hours in total duration, the report must be submitted prior to departing the vessel's port or place of departure. The report is required whether or not the owner or operator plans to discharge ballast water into waters of the state. Compliance with these reporting requirements may be met by sending the report to DEQ via e-mail, fax, or mail. Vessel owners or operators who rely on a third party to collect, forward or submit ballast water reporting forms are responsible for ensuring that DEQ receives the ballast water management information as required in this section. Electronic reporting must be submitted using methods and file formats approved by DEQ.

(2) The report must be submitted on a form acceptable to the U.S. Coast Guard pursuant to 33 CFR part 151, unless DEQ approves an alternative format in writing.

(3) If a vessel owner or operator alters or plans to alter its ballast water management for any reason after reporting its ballast water management information, the owner or operator must submit an amended ballast water management report to DEQ. An amended reporting form must be filed at the time of first known or predictable change of destination, and immediately upon completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(4) Any owner or operator failing to report ballast water management information as required by this rule must file the required report immediately upon discovering the violation.

(5) Vessel owners or operators must develop and maintain on board a ballast water management plan that is specifically developed for the vessel and that allows those responsible for the plan's implementation to understand and follow the vessel's ballast management strategy. The contents, training requirements and availability must be consistent with ballast water management plan regulations established by the U.S. Coast Guard under 33 CFR 151.2035a subpart D.

(6) Vessel owners or operators must record all ballast water and sediment management operations in the vessel's ballast water log, record book or other suitable documentation system.

(a) Content. Vessel owners or operators must maintain a version of the ballast water log, record book or other suitable documentation system in English on board the vessel that, at a minimum:

(A) Records each operation involving ballast water or sediment management;

(B) Describes each such operation, including the location and circumstances of, and the reason for, the operation;

(C) Records the exact time and position of the start and stop of the ballast water exchange or treatment operations for each tank; and

(D) Describes the nature and circumstances of any situation under which a safety exemption from ballast management requirements was declared.

(b) Availability. Vessel owners or operators must make the ballast water log or record book readily available for examination by DEQ at all reasonable times. The vessel owner or operator must transmit to DEQ any information about the vessel's ballast operations that DEQ requires.

(c) Retention period. The ballast water log or record book must be available on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(d) Required signatures. DEQ will require that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator or responsible officer attest to the accuracy of the information provided and certifies compliance with the vessel ballast water management plan.

(e) Alternative means of recording. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method must meet provisions of this section.

(f) Records Storage for unmanned barges. If no secure location is available to store records on unmanned barges, these vessel operators may meet provisions of this section by storing records on an associated tug or at other accessible locations and must provide logbook records to DEQ on request.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

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

DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02

340-143-0050

Ballast Water Management: 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 must also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand, or under circumstances when vessel operator is unable to verify ballast salinity. This requirement applies to ballast discharge to waters of the Columbia River, Coos Bay, or Yaquina Bay. Under these circumstances, vessel operators must conduct ballast exchange or saltwater flushing practices prior to treatment, 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 approved for shipboard use by the U.S. Coast Guard and meets a ballast discharge standard more stringent than the International Maritime Organization D-2 standards established under the 2004 Ballast Water Management Convention, provided 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; and

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

(i) One colony-forming unit of toxicogenic *Vibrio cholera* (serotypes O1 and O139) 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), 340-143-0010(2)(c), 340-143-0010(2)(d), or 340-143-0010(2)(e), or

(c) DEQ authorizes a vessel's voyage an exemption from the exchange requirements portion of this rule per exemption request procedures established under OAR 143-0040 for circumstances where:

(A) Design specifications indicate that exchange is incompatible with treatment system or vessel piping configurations, or

(B) Conducting exchange prior to treatment represents a threat to the environment, crew, or vessel.

(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.

Statutory/Other Authority: ORS 468.020 & 783.620 - 783.640

Statutes/Other Implemented: ORS 783.620 - 783.640

History:

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