

## USA - Ballast Water Discharge Rule

22nd May 2012

### Introduction

The final rule amending United States Coast Guard (USCG) regulations 33 CFR Part 151 concerning ballast water discharge requirements, and 46 CFR Part 162 covering the approval of ballast water treatment equipment, has been published in the US [Federal Register](#).

The new regulations establish a Ballast Water Discharge Standard (BWDS) for the allowable concentration of living organisms and bacteria that may be discharged in ballast water in US waters and specify the permitted means by which vessels equipped with ballast tanks can meet the BWDS. The requirements reflect Regulation D-2 of IMO's International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (Ballast Water Management (BWM) Convention 2004) which has not yet been ratified.

The new US BWDS regulations enter into force on 21 June 2012.

### Compliance Dates

- New vessels constructed on or after 1 December 2013, regardless of ballast water capacity, will be required to comply with the new requirements from delivery.
- Existing vessels constructed before 1 December 2013, with a ballast water capacity less than 1500m<sup>3</sup> will be required to comply with the new requirements from the first scheduled dry-docking after 1 January 2016.
- Existing vessels constructed before 1 December 2013, with a ballast water capacity of between 1500m<sup>3</sup> and 5000m<sup>3</sup> will be required to comply with the new requirements from the first scheduled dry-docking after 1 January 2014.
- Existing vessels constructed before 1 December 2013, with a ballast water capacity of more than 5000m<sup>3</sup> will be required to comply with the new requirements from the first scheduled dry-docking after 1 January 2016.

### Application and Exemptions

The requirements will apply to non-recreational US and foreign flagged vessels equipped with ballast tanks within US territorial waters and bound for a port or place in the United States, or that are due to navigate within the US internally. The regulations will not apply to foreign flag vessels solely navigating through US territorial waters on passage to another country.

Certain vessels are exempt from both the US Ballast Water Management (BWM) requirements and the reporting and recordkeeping provisions:

- Crude oil tankers engaged exclusively in the US coastal trade
- Vessels operating exclusively within one Captain of the Port (COTP) zone

Other vessels are exempt from the US BWM requirements only:

- Coastwise seagoing vessels of 1,600 GT or less that operate in more than one COTP zone and do not operate outside of the US Exclusive Economic Zone (EEZ)
- Non-seagoing vessels

- Vessel that take on and discharge ballast water exclusively within one COTP Zone

## Ballast Water Management Requirements

From the applicable implementation date onwards, vessels must comply with one of the following ballast water management options instead of exchanging ballast water:

1. Use a Ballast Water Management System (BWMS), type approved by the USCG, meeting the BWDS.
2. Receive potable water as ballast, loaded in the United States from a public water system meeting US Environmental Protection Agency (EPA) requirements. The ballast tanks must not have contained sea water ballast or, alternatively, they must have been cleaned and all sediment removed.
3. Discharge ballast water to a shore facility or to another vessel where the ballast can be treated. Such a facility must possess a valid National Pollutant Discharge Elimination System (NPDES) permit.
4. Ensure that no ballast water is discharged in US waters. However, care must be taken to ensure that the applicable hull shear force and bending moment limits are not exceeded, load line requirements are fulfilled, minimum intact stability requirements are met and the required under keel clearance is maintained.
5. Use an Alternate Management System (AMS) that has been type approved by a foreign Administration in accordance with the standards contained in the IMO BWM Convention. The AMS must also be approved by the USCG and installed prior to the compliance dates in the table above. An AMS approved by the USCG may be used for up to 5 years from the applicable compliance date.

The compliance dates in the table may be extended by the USCG on a case by case basis. Documentary evidence must be provided to the USCG showing that despite all efforts, compliance cannot be achieved prior to the required date. Requests for extensions must be made at least 12 months in advance of the applicable compliance date. If granted, extensions will be for the minimum time necessary to achieve compliance as determined by the USCG.

A BWMS which becomes inoperable or is temporarily unavailable must be reported to the USCG as soon as practicable. In such cases the USCG may allow another permitted BWM method to be used. However, if the Master determines that this is not possible due to safety or stability concerns, the USCG may allow ballast to be discharged in areas other than the Great Lakes or the Hudson River north of the George Washington Bridge. Such discharges will be limited to the minimum amount of ballast water necessary to ensure the safety and stability of the vessel during cargo operations.

## Ballast Water Management Plan

Under the new regulations vessels will also be required to carry a ship-specific Ballast Water Management Plan (BWMP). There is no requirement for the plan to be approved by a third party at this stage. The BWMP must include:

- Detailed safety procedures
- Procedures for implementing the mandatory BWM requirements
- Procedures to enable the co-ordination of the vessel's BWM strategy with the USCG
- Procedures for the removal of fouling and sediment
- The identity of the officer responsible for ensuring that the BWMP is properly implemented
- Detailed reporting requirements for those ports and places in the United States that the vessel may visit

If the vessel's working language is neither English, French nor Spanish, a translation of the BWMP must be available on board in one of these languages.

## Best Practice Ballasting Requirements

In order to reduce the transfer of aquatic non-indigenous species, vessels will be required to follow best practice when ballasting, including:

- Limiting the discharge of ballast water to only that which is necessary to ensure safe cargo operations and to maintain adequate stability whilst in US waters
- Avoiding ballasting within marine parks or coral reefs
- Minimising the taking-on of ballast in areas known to contain harmful organisms, or near sewage outfalls, or where propellers may stir up sediment from the seabed
- Cleaning ballast tanks regularly to remove sediments either at sea, under controlled arrangements in port, or during dry-docking. Sediments are to be disposed of in accordance with applicable local, state and federal regulations
- Washing anchors and cables when heaving anchor in order to remove sediment and organisms at their place of origin
- Removing fouling organisms from the hull, piping and tanks regularly and disposing of the removed substances in accordance with local, state and federal regulations
- Training officers and crew in the application of ballast water and sediment management and treatment procedures

## Reporting and Recordkeeping Requirements

Vessels bound for the Great Lakes, the Hudson River north of the George Washington Bridge or other ports or places in the United States, whether from inside or outside the Exclusive Economic Zone (EEZ) will still be required to submit a ballast water reporting form. Detailed information on the completion of the ballast water reporting form and instructions for its submission can be found on the [National Ballast Information Clearinghouse](#) website.

Detailed written records regarding the vessel, voyage, ballast tanks, ballast tank capacities and the ballast on board must also be maintained. If treated ballast water is to be discharged in US waters or if a reception facility is to be used, further information must be recorded including the date and location of ballasting including volumes and temperatures. Also details of where the ballast water will be discharged including date, location, volume and salinity. Similarly, if ballast tank sediment is to be discharged in the US, the name and location of the receiving facility must be recorded.

The mandatory record keeping requirements may be fulfilled by completing the IMO Ballast Water Management Guidelines [Ballast Water Reporting Form](#) or by completing the ballast water information section of the St. Lawrence Seaway "Pre-Entry Information from Foreign Flagged Vessels" form.

## Compliance

The USCG will check whether or not vessels fitted with a BWMS or an AMS are complying with the regulatory requirements by conducting visits to examine documentation and take samples of ballast water and sediment, and make other enquiries as deemed necessary. Such vessels will be required to fit a sampling port to each ballast water overboard discharge line to facilitate the drawing of samples.

## Penalties

A person found to have breached the regulatory requirements may be fined up to US\$35,000 per day for a continuing violation. A vessel operated in violation of the regulations will be liable in rem for any civil penalty imposed. A person who knowingly violates the requirements will also be guilty of a Class C felony.

It is believed that the United States Department of Justice will enforce compliance through the rigorous use of civil fines and criminal penalties in a similar manner to violations of the MARPOL convention.

## Further BWM Regulatory Changes

It should be remembered that individual states are permitted by the Clean Water Act (CWA) to introduce more stringent requirements if considered necessary, which may result in ballast water discharge standards that exceed federal requirements.

The Final Rule also contains a provision whereby the USCG will publish, no later than 1 January 2016, the results of a practicability review to determine whether technology is available that may allow a more stringent BWDS to be implemented, either in whole or in part. If so, the USCG may propose a more demanding standard thereafter.

The foregoing is a brief overview of the forthcoming US ballast water discharge requirements. For detailed information please refer to the Final Rule in the [Federal Register](#). Members requiring further guidance are advised to contact the Loss Prevention department.
