

Comparison of H.R. 2830 and S. 1578: Ballast Water Legislation

H.R. 2830	S. 1578
<p>Treatment Standards</p> <p>Ballast water exchange requirements: exchange will be required for vessels entering the U.S. at least 200 miles from shore until they are required to install treatment technology. Ballast water treatment requirements: 100 times stricter than the standard adopted by the International Maritime Organization (IMO) and applicable to all ocean-going ships. At the request of the Secretary of Agriculture, vessels operating exclusively within the Great Lakes are also required to adopt a treatment system to stop the spread of infectious diseases to plants and animals.</p>	<p>Treatment Standards</p> <p>Ballast water exchange requirements: vessels must immediately conduct ballast water exchange that results in 95% volumetric exchange, or treatment technology that removes at least 98% of organisms larger than 50 microns. Ballast water treatment requirements: 100 times stricter than the IMO standard. Vessels confined to Great Lakes (defined as Superior, Huron, Michigan, Erie and connecting channels) are exempted.</p>
<p>NOBOBs</p> <p>The Secretary will issue regulations for NOBOBs (ships with No Ballast On Board) within 180 days of enactment which must, at a minimum, require those ships to conduct saltwater flushing of ballast water tanks. These ships must also certify compliance with these regulations before being allowed to enter the Great Lakes. NOBOBs will be required to install treatment technology under the timeline.</p>	<p>NOBOBs</p> <p>180 days after enactment, the Secretary will adopt special regulations for NOBOBs, including at a minimum that vessels be required to conduct salt-water flushing before being allowed entry into the Great Lakes. (Flushing = adding mid-ocean water to ballast tanks that have residual quantities of ballast water, mixing mid-ocean water with residual sediment in the ballast tanks, and discharging water so that salinity level of the water remaining in the tanks exceed 30 parts per thousand.)</p>
<p>Timeline</p> <p>All ocean-going vessels – including NOBOBs – will be required to conduct ballast water exchange until the treatment standards take effect. Ships will be required to install treatment technology that meets, at a minimum, the international standard set by the IMO when they are first dry-docked starting Jan. 1, 2009. Vessels must adopt the U.S. standard (100x stronger than the IMO standard) when they are first dry-docked starting Jan. 1, 2012, but not later than Dec. 31, 2013. Ships will be allowed to use the installed treatment technology for 10 years. The bill allows for a delay in application of the U.S. standard for up to two years (to 2014) if the Secretary determines that appropriate technology is not available for any class of vessels. Even if such technology doesn't exist, the Coast Guard is required to apply the best available treatment technology at the time. In essence, the more stringent technology may not be installed in some ships until 2022 (or 2024 if implementation of the U.S. standard is delayed). For example, a ship that installs the less stringent technology before 2012 would not be required to upgrade for 10 years.</p>	<p>Timeline</p> <p>All vessels will be required to install treatment technology by 2012. If the Secretary determines that the technology to meet the treatment standard is not feasible, the best performing technology will be required, and at a minimum, vessels must meet the IMO standard. The Secretary is permitted to delay implementation for any class of vessels by 2 years (and there is a possibility of subsequent 2 year delays under the current language) based on the feasibility review. If the review determines that existing technology exceeds the standards, or that technology can be implemented faster than required, the schedule may be accelerated, more stringent standards imposed, or both, after giving two-years notice. If ships install technology that meets the most stringent standards, they are granted a 10-year grace period before being required to upgrade, whereas if ships install less stringent technology, the grace period is 5 years.</p>
<p>Preemption</p> <p>State programs in effect on Jan. 1, 2007, will remain in effect until Jan. 1, 2012, when the U.S. standard may take effect. States are also allowed to submit a list of "high risk vessels" to the Coast Guard, and states may seek approval of their own enforcement regimes. States may assess greater fines or penalties for violations of the federal standards. States may impose more stringent treatment standards for ballast water discharged to land- or water-based reception facilities. The Clean Water Act is not expressly preempted nor does the bill include a "savings clause" clarifying states' ability to establish their own water quality standards or require NPDES permits.</p>	<p>Preemption</p> <p>States would be preempted from enacting conflicting or inconsistent regulations regarding ballast water exchange and treatment requirements. The federal law would control ballast water treatment technology regulation. States may submit a list of "high risk vessels" to the Coast Guard and may enforce national standards through technology development programs or incentives and impose penalties or fines for violations of the federal regulation. The bill would exclude use of the Clean Water Act to regulate ballast water, once enacted.</p>
<p>Judicial Review</p> <p>Judicial review appeared in the original draft bill, but it was deleted by amendment in committee.</p>	<p>Judicial Review</p> <p>States and citizens may challenge a regulation adopted by the Secretary within 120 days after the rulemaking appears in the Federal Register.</p>