EPA Proposes New Rule Aimed at Significantly Reducing Emissions from Oceangoing Vessels

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On August 28, 2009, the U.S. Environmental Protection Agency (EPA) proposed a new rule aimed at significantly reducing emissions of nitrogen oxide (NOx) and particulate matter (PM) from large oceangoing vessels flagged or registered in the United States, including cruise ships, container ships, tankers and bulk carriers. *See Control of Emissions from New Compression-Ignition Engines at or Above 30 Liters per Cylinder*, 74 Fed. Reg. 44,442 (Aug. 28, 2009). The notice and comment period for the proposed rule ended on September 28, 2009. Opponents of the proposed rule believe that EPA should extend the compliance timeline proposed in the rule and are lobbying Congress to block EPA's ability to implement aspects of the rule if finalized. In response, proponents of the rule are also lobbying key members of the Senate to ensure that the 2010 Interior and Environment Appropriations Bill (H.R. 2996) does not include a rider that could limit EPA's ability to implement the rule's proposed engine and fuel standards.

EPA's "Coordinated Strategy"

The proposed rule, which would affect not only the maritime and petroleum industries, but engine and vessel manufacturers as well, is part of a "coordinated strategy" by EPA to significantly reduce air emissions from oceangoing vessels. EPA's coordinated strategy also includes the United States and Canada's March 2009 proposal to the International Maritime Organization to designate large portions of the North American coastline as an Emissions Control Area (ECA), and new engine and fuel sulfur limits contained in recent amendments to Annex VI to the International Convention on the Prevention of Pollution from Ships (MARPOL Annex VI), which the United States implements through the Act to Prevent Pollution from Ships, 33 U.S.C. § 1901 *et seq*.

EPA projects that, once fully realized, the agency's coordinated strategy would reduce annual emissions of NOx and PM from oceangoing vessels by 1.2 million and 143,000 tons, respectively, by 2030.

The Proposed Rule

The proposed rule would apply to new "Category 3" compression-ignition marine engines (also called marine diesel engines) installed on vessels flagged or registered in the United States. Category 3 marine diesel engines are large propulsion engines found on most oceangoing vessels with per cylinder displacement at or above 30 liters per

cylinder. According to EPA, Category 3 engines currently use emission control technology comparable to technology used by non-road engines in the early 1990s. In addition, these engines currently burn fuel that can have a sulfur content of up to 30,000 ppm or more.

The proposed rule would revise EPA's federal program under the Clean Air Act (42 U.S.C. § 7401 *et seq*.) to include two additional tiers of NOx standards for new Category 3 marine diesel engines. The proposed near-term (Tier 2) standards for newly-built engines would apply beginning in 2011 and require more efficient use of current engine technologies, including engine timing, engine cooling and advanced computer controls. The proposed long-term (Tier 3) standards would apply beginning in 2016 and require the use of high efficiency after treatment technology, such as selective catalytic reduction to achieve NOx reductions 80 percent below current levels.

In addition to the new Tier 2 and 3 engine standards, the new rule also would change EPA's diesel fuel program to forbid the production and sale of marine fuel with sulfur content in excess of 1,000 ppm for use in the waters within the proposed ECA and internal US waters.

Conclusion

While the proposed rule is estimated to result in reductions of NOx emissions from oceangoing vessels by up to 25 percent by 2011 and 80 percent by 2016, the cost to industry is also expected to be significant (i.e., approximately $3 billion annually according to EPA estimates). In addition, opponents of the rule have noted that fuel switching ahead of new technology could result in vessels entering ports less maneuverable and, as a result, increase the risk of accidents. Although the notice and comment period for the proposed rule ended on September 28, 2009, the future of the rule remains uncertain. While the Interior and Environment Appropriations Bill has cleared both chambers of Congress, changes will still be possible when the House and Senate confer to finalize the bill. Conference on the bill is not yet scheduled.

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