



July 2008

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California Regulators Adopt Tough Pollution Rules for Oceangoing Vessels

New regulations adopted by the California Air Resources Board (“CARB”) would establish the world’s toughest pollution rules for oceangoing vessels. The rules, which take effect in 2009, would require ships within 24 nautical miles of California to burn low-sulfur diesel instead of bunker fuel. Approximately 2,000 U.S. and foreign flagged vessels would be affected, including container ships, oil tankers and cruise ships. The rules, adopted July 24, 2008, are intended to improve the health of coastal residents by reducing emissions from vessels that call on California ports.

The new regulations will be implemented in two phases:

- Starting July 1, 2009, shippers would be required to use diesel oil with a sulfur limit of 0.5 percent; and
- On January 1, 2012, the sulfur limit would be reduced to 0.1 percent, a level that would cut soot by 83 percent, sulfur oxides by 95 percent, and nitrogen oxides by 6 percent.

In contrast, the International Maritime Organization (“IMO”) currently allows fuel that contains 4.5 percent sulfur. IMO negotiators will meet in October to consider new sulfur limits. The proposed amendment to current IMO regulations would establish a progressive reduction of sulfur levels in heavy bunker fuels, starting with a reduction to 3.5 percent sulfur by January 1, 2012, with a final global cap of 0.5 percent sulfur effective January 1, 2020, if feasible, as well as more stringent Tier II and Tier III nitrogen oxide emissions standards for marine engines.

Shippers have asked CARB to defer any action until international rules are implemented. In a compromise, CARB voted July 24, 2008 to allow its executive director to suspend California’s regulation “if and when the IMO or the federal government adopts a rule as effective as California’s.”

At the federal level, Sen. Barbara Boxer (D-CA), has introduced legislation that would reduce air pollution from ships and other marine vessels and would specifically target pollution from transoceanic vessels. Her bill would require the U.S. Environmental Protection Agency to limit the sulfur content to 1,000 parts per million (0.1 percent) in main and auxiliary engines for both domestic and foreign flagged vessels using U.S. ports beginning in 2010.

Rep. Hilda Solis (D-CA-32) has introduced a companion bill (H.R. 2548) in the House, which is still awaiting consideration by the House Energy & Commerce Committee. Sen. Boxer’s bill is currently awaiting consideration by the full Senate.

CARB’s new regulation will have a global impact, as 43 percent of all marine freight imported into the United States moves through the ports of Los Angeles and Long Beach. CARB has estimated that the new rules will save Californians at least \$6 billion a year in health-related expenses and will cost the shipping industry between \$140 million and \$360 million a year.

According to CARB, a typical cargo ship would pay approximately \$30,000 more in fuel costs for each visit to a California port, or about \$6 per container shipped from Asia. CARB has said the increased fuel costs amount to 0.1 cent per pair of sneakers.

Noncompliance with the new regulations will result in fines. Vessels using fuel over the sulfur limit would pay a fee beginning at \$45,500 for each visit, with a maximum of \$227,500 on the fifth visit.

Environmentalists and community groups praised CARB's adoption of the new regulations, but shippers oppose the limits, saying that California lacks jurisdiction to regulate beyond the 3-mile limit of state waters. They also contend that low-sulfur fuel is in short supply, particularly in Asian ports.

In 2007, the Pacific Merchant Shipping Association ("PMSA"), which represents oceangoing carriers and terminal operators, won a suit that halted CARB's previous effort to control shipping pollution by regulating engine emissions. CARB has said that it believes that a fuel regulation will stand up to a court challenge, however, PMSA has stated that the new regulation represents arguments that already failed in the courts. The association, which prefers a voluntary approach to emission requirements and believes that the IMO should implement such requirements, plans to fight the new regulations.

Representatives of the U.S. Navy have also expressed concern that under the new regulations, vessels would be more likely to travel through their offshore testing and training range. CARB staff have pledged to work with Navy officials to address their concerns.

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