

Around the Registry Horn for Cruise Ships

What's in Store in '10

This article takes a quick look around the agencies and Congress to see what regulations are on the horizon for cruise ships that either ply U.S. waters or are flagged in the United States. It is safe to say cruise ship owners and operators of either class have to keep a watchful eye on the current regulatory agendas of the International Maritime Organization (IMO), the U.S. Coast Guard, and the Environmental Protection Agency (EPA).

New Controls on Marine Diesel Engine Emissions

EPA, in conjunction with the Coast Guard, has taken the following steps to reduce emissions from diesel engines on ocean-going vessels, including large passenger vessels:

1) Issued a proposed rule under the Clean Air Act (CAA) that establishes more stringent standards for the largest marine diesel engines on oceangoing vessels, called Category 3 engines;

2) Issued a proposed rule regarding international standards, in conjunction with the CAA proposed rule noted above, for marine engines and fuels contained in Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI); and

3) Submitted a proposal to the IMO to designate the waters of the Exclusive Economic Zones off the coasts of the United States and Canada, with certain exceptions, as an Emission Control Area (ECA) under Annex VI of MARPOL, with more stringent NOx and fuel sulfur requirements.

The proposed EPA rule was issued on August 28, 2009. The comment period closed on September 28, 2009, and EPA is expected to issue a final rule in 2010. Under the proposed rule, more stringent NOx standards would be set for Category 3 engines installed on U.S.-flag vessels. The near-term or Tier 2 standard would apply beginning in 2011, and would require more efficient use of current in-engine technologies, such as engine timing, engine cooling, and advanced computer controls. EPA predicts these new emission standards would result in a 15 to 25 percent reduction below current diesel emission levels. The

proposed long-term or Tier 3 standards would apply beginning in 2016 and would require the use of high efficiency, after-treatment technology, such as selective catalytic reduction to achieve an 80 percent reduction of NOx from current levels.

In the same proposed rule, EPA has also proposed regulations to implement several provisions of U.S. law implementing MARPOL Annex VI, including authority granted to EPA to certify that engines installed on U.S.-flag vessels meet current Annex VI regulations.

On March 27, 2009, the United States and Canada submitted a proposal to the IMO to designate coastal waters off North America as an ECA. Once agreed to by the IMO, this proposal would control the emissions of NOx, SOx, and particulate matter from oceangoing ships, including cruise ships, entering designated ECA waters, regardless of their flag state. Within an ECA, a nation can establish more stringent emission standards. For example, beginning in 2015, fuel used by all vessels operating in the proposed ECA can not exceed 1,000 ppm sulfur; and beginning in 2016, new engines on vessels in the proposed ECA must achieve an 80 percent reduction in NOx emissions.

Parties to Annex VI can vote on the ECA proposal as early as March 2010, during the 60th session of the IMO Marine Environmental Protection Committee. (For a detailed analysis of the EPA rule, see "EPA Proposed Emissions Standards for Category 3 Marine Diesel Engines on Oceangoing Vessels", Blank Rome Maritime Developments Advisory, September 2009, No. 17, www.blankrome.com.)

Push-Back from Great Lakes Operators

Great Lakes carriers protested to Congress that the proposed ECA designation and accompanying rule would have cost vessels operating on the Great Lakes an additional \$200 million for the cleaner fuel, and the attendant loss of several hundred jobs. Coming at a time of extreme economic hardship in the region, Congress was sympathetic to their plight. As a result, in the recently-enacted Interior-Environment Appropriations



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Act for FY2010, Congress carved out an exemption from the proposed rule for existing steamships that operate exclusively within the Great Lakes, and their connecting and tributary waters.

Enhanced Ballast Water Management Standards Proposed by the Coast Guard

From the passage of the first invasive species law, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and the subsequently-enacted National Invasive Species Act of 1996, the Great Lakes were the focus for managing discharges of ballast water that were known to bring so-called invasive species into those waters on the hulls of ships on international voyages. The Coast Guard and Congress have continued to focus on this area.

On August 28, 2009, the Coast Guard proposed the issuance of more stringent and more specific standards for ballast water management. Unless extended, the comment period will close on December 4, 2009. We do not anticipate seeing a final rule this year. The rule applies to all vessels that operate in U.S. waters, are bound for ports or places in the United States, with the exception of vessels that operate exclusively in one Captain of the Port Zone. Existing regulations applicable to the Great Lakes would be retained.

Existing Coast Guard regulations allow exchanges of ballast water outside U.S. waters. Under the proposed rule, the Coast Guard is discarding this "interim" step, and moving to specific technical standards for discharge of organisms into U.S. waters in two phases. During phase one, which applies to existing vessels dry-docked after January 1, 2014, ballast water exchanges would continue to be permitted. At the end of phase one, this

option would be eliminated. The standards are based on allowable concentrations of living organisms in ships' ballast water. (These standards are described in greater detail on the Coast Guard's web site at www.uscg.mil/environmental_standards/). The Coast Guard believes that new technologies are being developed to help companies meet these standards.

Proposed Clean Cruise Ship Legislation

Moving beyond discharges of ballast water, Senator Durbin (D-IL) and Congressman Sam Farr (D-CA) have introduced legislation to regulate cruise ships under the EPA's National Pollutant Discharge Elimination System for sewage, graywater, and bilge water. The "Clean Cruise Ship Act of 2009" would prohibit the discharge of sewage, graywater, and bilge water within 12 miles of shore; require that, outside of 12 miles, these discharges be treated to reduce pollution to the levels currently achievable by advanced wastewater treatment systems; and prohibit the discharge of sewage sludge, incinerator ash, and hazardous waste in U.S. waters.

The bills were referred to their respective Senate and House committees and will likely not be considered this year.

Funding Options for Cruise Ship Owners and Operators

While EPA and the Coast Guard are ratcheting up emission control standards, owners and operators have few places to look for financial assistance. One option is EPA's Diesel Emission Reduction Act (DERA) Program. This Program got a boost of \$300M in the stimulus bill, but generally appropriations average \$50M a year. Owners and operators of passenger vessels that operate generally out of one port location in the United States can apply for these funds to replace older diesel engines by working with non-profit regional cooperatives and Ports.

Conclusions

The goal of these efforts is cleaner ports, cleaner waters, and improved health benefits. At the same time, many of these new or impending requirements will be costly for vessel owners operators, and there are limited federal resources to assist companies with compliance. As such, vessel owners and operators should stay on top of these new developments and plan ahead for new capital and operational requirements.

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