

used highway or land-based engine converted for marine installation would not be subject to the standards, since its title was already transferred to the initial highway or land-based nonroad user.

With respect to imported marine diesel engines, 40 CFR 94.2 defines “new” as an engine that is not covered by a certificate of conformity at the time of importation and that was manufactured after the starting date of the emission standards applicable to such an engine (or which would be applicable to such an engine had it been manufactured for importation into the United States). According to this definition, the standards apply to engines that are imported by any person, whether newly manufactured or used, and whether they are imported as uninstalled engines or if they are already installed on a marine vessel that is imported into the United States. In one example, a person may want to import a vessel with an engine built after the effective date of the standards, but the engine does not have a certificate of conformity from EPA because the engines and vessel were manufactured elsewhere. We would still consider it to be a new engine or vessel, and it would need to comply with the applicable emission standards. This provision is important to prevent manufacturers from trying to avoid the emission standards by building vessels abroad, transferring their title, and then importing them as used vessels.

2. “New” Engines on Vessels Flagged or Registered Elsewhere

This final rule does not apply to Category 1, 2, and 3 marine diesel engines that are built after the standards become effective and that are installed on foreign vessels that enter U.S. ports and are not imported into the United States. Section 213 of the Clean Air Act (42 U.S.C. 7547), authorizes regulation of “new nonroad engine” and “new nonroad vehicle.” However, Title II of the Clean Air Act does not define either “new nonroad engine” or “new nonroad vehicle.” Section 216 defines a “new motor vehicle engine” to include an engine that has been “imported.” EPA modeled the current regulatory definitions of “new nonroad engine” and “new marine engine” at 40 CFR 89.2 and 40 CFR 94.2, respectively, after the statutory definitions of “new motor vehicle engine” and “new motor vehicle.” This was a reasonable exercise of the discretion provided to EPA by the Clean Air Act to interpret “new nonroad engine” or “new nonroad vehicle.” See *Engine Manufacturers Assoc. v. EPA*, 88 F.3d 1075, 1087 (D.C. Cir. 1996).

The 1999 marine engine rule did not apply to marine engines on foreign vessels. 40 CFR 94.1(b)(3). At that time, we concluded that engines installed on vessels flagged or registered in another country that come into the United States temporarily will not be subject to the emission standards. Those vessels are not considered imported under the U.S. customs laws and did not meet the definition of “new” adopted in that rule (64 FR 73300, Dec. 29, 1999).

The May 29, 2002 proposed rule solicited comment on whether to exercise our discretion and modify the definition of a “new marine engine” to find that engine emission standards apply to foreign vessels that enter U.S. ports. As discussed earlier, the standards in this rulemaking will go into effect in 2004. We will also conduct a subsequent rulemaking that will address revisions to these standards for future model years. In this subsequent rulemaking, we will consider adopting more stringent standards that require a longer lead time than the standards adopted in this final rule. The issue of applying these more stringent standards to foreign vessels will also be considered in that subsequent rulemaking.

We must therefore determine whether to revise the definition of “new” to include foreign vessels for purposes of the near-term standards adopted in this final rule. EPA need not decide whether we have the discretion to interpret “new” nonroad engine or vessel in that manner; however, we believe it would be appropriate not to exercise such discretion at this time even assuming we had the discretion to interpret “new” to include foreign vessels.

As noted above, one of the reasons we intend to address a second phase of more stringent standards in a subsequent rulemaking is to facilitate the development of more stringent consensus international requirements. Adoption of international standards has the clear potential to maximize the level of emission reductions achieved from emission control on U.S. and foreign vessels. For example, consensus international standards of appropriate stringency would facilitate and effectively reduce or remove the legal and policy objections to controlling emissions from foreign vessels, and therefore would facilitate achieving the greatest emission reductions from Category 3 vessels. This is one reason we determined to address the second phase of standards in a subsequent rulemaking timed to facilitate such international action, but also timed to allow us to proceed expeditiously on

our own if appropriate international standards are not adopted.

Applying the first phase of standards adopted in this final rule to foreign vessels would require us to determine that we have the discretion to interpret new nonroad engine or vessel in that manner, and that it is a reasonable exercise of discretion to do so. However even assuming we have the discretion to interpret “new marine engine” to include engines on foreign vessels, we believe it would be appropriate not to exercise such discretion at this time.

The same reasons that counsel deferring adoption of more stringent standards to a subsequent rulemaking also counsel deferring a decision on applying Clean Air Act standards to foreign vessels to such a rulemaking. We believe that deferring this decision may help facilitate the adoption of more stringent consensus international standards. A new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Adoption of appropriate international consensus standards has the clear potential to maximize the level of emission reductions from domestic and international vessels.

Our decision to defer application of the standards to engines on foreign flag vessels is not expected to lead to any significant loss in emission reductions. We fully expect that foreign vessels will comply with the MARPOL standards whether or not they are also subject to the equivalent Clean Air Act standards being adopted in this final rule. Consequently, no significant emission reductions would be achieved by treating foreign vessels as “new” for purposes of the near-term standards in this final rule and there is no significant loss in emission reductions by not including them.

In conclusion, we are not including foreign engines and vessels in this rulemaking and are not revising the definition of “new marine engine” at this time. We do not need to decide now whether we have the discretion to include foreign vessels under the nonroad provisions of the Clean Air Act. In the subsequent rulemaking, we will be in a better position to resolve under what circumstances we may and should define new nonroad engine and vessel to include foreign engines and vessels. As part of that determination, we will also assess the progress made by the international community toward the adoption of new more stringent international consensus standards that reflect advanced emission-control technologies.