

Truck Emission Regs Less Divisive Than Recent EPA Rules

By **Juan Carlos Rodriguez**

Law360, New York (November 5, 2015, 4:06 PM ET) -- Truck manufacturers and environmentalists have told the U.S. Environmental Protection Agency that the second phase of the EPA's plan to reduce greenhouse gas emissions from heavy-duty trucks still needs work, but experts say strong outreach will likely reduce resistance to the rule.

In a June package of proposed regulations, the EPA proposed tightening carbon dioxide emission standards for heavy-duty trucks, while the National Highway Traffic Safety Administration would impose fuel consumption measures. The proposed rule would affect four types of vehicles: combination tractors; trailers pulled by combination tractors; heavy-duty pickup trucks and vans; and vocational vehicles, which include all other heavy-duty vehicles such as buses, garbage trucks and concrete mixers.

After detailed discussions with industry groups and companies about the impacts of the rules, it appears they likely won't provide the same type of legal fireworks as have sprung up around recent efforts like the Clean Power Plan, which would reduce carbon emissions from power plants, or the Waters of the United States rule, which clarifies the scope of the Clean Water Act.

While the agencies spent time with interested parties before either the CPP or WOTUS actions were finalized, the outreach it conducted prior to proposing the second phase heavy-duty truck emissions rules seems to have created a smoother path, according to Matthew Morrison, a partner at Pillsbury Winthrop Shaw Pittman LLP.

"The [EPA's] Office of Transportation and Air Quality does a significant amount of industry outreach before they go forward with a rule. Challenges may still be inevitable, but these consultations are helpful in allowing the agency to address many of the concerns and potential legal arguments before the rule is even proposed," Morrison said.

Bob Meyers, a senior counsel at Crowell & Moring LLP, said it would be very difficult for the agencies to craft a workable rule without strong communication with industry parties.

"It's a huge, diverse industry and although there is a group of engineers and program analysts up in Ann Arbor, their resources aren't infinite. They need to rely on outside industry expertise," he said. "If the agencies push it too far, they could make the rule something that's not easily complied with."

Meyers noted that there were a couple of challenges to the first phase rules, but they didn't come from major manufacturers, or equipment makers, the companies that actually build the engines and the cars — he

said that's a product of the agencies' outreach on these types of rules.

The first phase of the effort began in 2011, when the EPA and NHTSA developed greenhouse gas emission and fuel efficiency standards for medium- and heavy-duty vehicles made from 2014 to 2018. The second phase will cover a longer time frame — until 2027.

Morrison said even if the proposals are not welcome — and industry members say the plan still needs significant revisions — the agency works hard to ensure that its proposals will be workable. And by engaging industry in the development of proposals, the EPA can minimize the chances of a successful legal challenge while pushing industry toward a more environmentally protective position.

In joint comments to the EPA and NHTSA, the five major heavy-duty truck manufacturers in North America — Caterpillar Inc., Daimler Trucks North America, Navistar Inc., Paccar Inc. and Volvo Group — called the proposed plan "historic in its scope and complexity."

"The major heavy-duty vehicle manufacturers appreciate the time the agencies have given to receive our feedback, through face-to-face meetings and other regular exchanges, through our trade associations, and through our various comment submittals," they said. "Without this open dialogue, the regulation risks being finalized in a way that will not be effective, and will have adverse impacts on the environment and on the users of commercial vehicles and engines."

One criticism the truck manufacturers have leveled at the proposed rule is that it artificially inflated the required greenhouse gas reductions by nearly 50 percent in some cases, "far beyond" the targeted levels reported in the agencies' overview announcements. And the companies said the agencies are refining the proposed test procedures, often in ways that differ considerably from the base proposal.

The Truck and Engine Manufacturers Association, or EMA, while acknowledging its support of the plan's goals, also said more work is needed to make the plan feasible for its members. The EMA said one core issue relates to the proposed test procedures and data assessment methods to determine a heavy-duty vehicle's certification to and compliance with the proposed aerodynamic standards for each major tractor model.

"There are a number of fundamental problems with the proposed aerodynamic testing requirements," the association said.

And the Natural Resources Defense Council also said it supports the rule, although it pushed for increased stringency of the standards. The NRDC said it believes standards that achieve fuel consumption and emissions reductions of at least 24 percent by 2024 and at least 31 percent by 2027 relative to the first phase would meet the agency obligations for setting standards that are the maximum feasible — for NHTSA — and appropriate — for the EPA.

Margaret Stolfa, a partner at Gordon & Rees LLP, said she believes companies are supportive because they've seen that with the first phase, they were able to make big strides in achieving the goals.

"It's less worrisome in that sense. They've got experience with the fact that it can be done, and they can still be profitable," Stolfa said.

--Additional reporting by Beth Winegarner. Editing by Katherine Rautenberg.
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