

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2004-0357; FRL-8264-3]

RIN 2060-AO03

### National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair (Surface Coating) Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On December 15, 1995, EPA issued national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act for shipbuilding and ship repair (surface coating) operations (subpart II). The NESHAP requires existing and new major sources to control emissions of hazardous air pollutants to the extent achievable by the use of maximum achievable control technology. The proposal is intended to close an unintended gap in the scope of activities subject to the NESHAP by amending the definition of "ship" to include all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) less than 20 meters in length and designed and built specifically for military or commercial purposes. All shipbuilding and ship repair coating operations performed on "ships," as so defined, are subject to subpart II if they take place at an "affected source," as defined in 40 CFR 63.782. The only exception is that this NESHAP shall not be construed to apply to coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing at 40 CFR part 63, subpart VVVV. We have also added a definition of "commercial" to clarify the types of nonmilitary vessels less than 20 meters that we consider to be ships. The amended definition of "ship" renders the term "pleasure craft" unnecessary and the amendments, therefore, eliminate the use of that term in 40 CFR part 63, subpart II.

**DATES:** *Comments.* Written comments must be received on or before January 29, 2007 unless a public hearing is requested by January 8, 2007. If a public hearing is requested, written comments must be received on or before February 12, 2007.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on January 16, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2002-0093, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov) and [serageldin.mohamed@epa.gov](mailto:serageldin.mohamed@epa.gov).
- *Fax:* (202) 566-1741 and (919) 541-3470.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: Air and Radiation Docket (6102T), EPA West, Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0357, (Legacy No. A-92-11). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404-02), Attention Docket ID No. EPA-HQ-OAR-2004-0357, (Legacy No. A-92-11), Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI.

The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket.* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2002-0093, EPA West, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**NOTE:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to [www.regulations.gov](http://www.regulations.gov) are not affected by the flooding and will remain the same.

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Dr. Mohamed Serageldin, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, NC 27711; telephone number (919) 541-2379; fax

number (919) 541-3470; e-mail address: [serageldin.mohamed@epa.gov](mailto:serageldin.mohamed@epa.gov). **SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry .....	Facilities that are engaged in shipbuilding and ship repair operations. The term ship means all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, tankers, container ships, patrol and pilot boats, yachts, and dredges.
<b>Note:</b> An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation.	
Federal government	Federal Agencies which undertake shipbuilding or repair operations see above) such as the Navy and Coast Guard.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this rule.

To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.781 of the rule, as well as in the direct final rule. If you have any questions regarding the applicability of this rule to a particular activity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Submitting CBI.** Do not submit information which you claim to be CBI to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

**Public Hearing.** Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Dr. Mohamed Serageldin, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143-03), Research Triangle Park, NC 27711, telephone number (919) 541-2379, e-mail address:

[serageldin.mohamed@epa.gov](mailto:serageldin.mohamed@epa.gov), at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Dr. Serageldin to verify the time, date, and location of the hearing. The

public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

**World Wide Web (WWW).** In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg/>. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

**Direct Final Rule.** The proposed amendments appear in the Rules and Regulations Section of this **Federal Register** as a direct final rule. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule.

We are taking direct final action because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no material adverse comment, we will take no further action on the proposed rule. If we receive material adverse comment or a public hearing is requested, we will withdraw only the amendments, sections, or paragraphs of the direct final rule on which we received material adverse comment. We will publish a timely withdrawal in the **Federal Register** indicating which will become effective and which are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all comments pertaining to the amendments will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this proposed rule. Any parties interested in commenting must do so at this time.

## Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, a small entity is defined as: (1) A small business according to Small Business Administration size standards for companies mainly identified by NAICS codes 336611 (shipbuilding and repairing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule. This action broadens the scope of the category through revision of the definition of ship which may impact facilities currently complying with subpart II, none of which are small entities. The direct final rule will not impose any new requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome

comments on issues related to such impacts.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 22, 2006.

**Stephen L. Johnson,**  
*Administrator.*

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