

KELLEY DRYE

COLLIER SHANNON

Proposed Redefinition of “Ship”
for Purposes of Subpart II
NESHAP Applicability

71 Fed. Reg. 78369

71 Fed. Reg. 78392

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Current Definition of a Ship

“Ship means any maritime or freshwater vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. For purposes of this subpart, pleasure crafts and off-shore oil and gas drilling platforms are not considered ships.”

- 40 C.F.R. § 63.782 (*emphasis added*)

Definition of a Pleasure Craft

“Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length.”

- 40 C.F.R. § 63.782 (*emphasis added*)

Regulatory “No Man’s Land”

- » Privately-owned vessels in excess of 20 meters are not “ships” subject to Subpart II because they are not commercial or military vessels
- » Privately-owned vessels in excess of 20 meters are not “pleasure craft” because they exceed 20 meters.

OECA Applicability Definition

» “Since the yachts are not used for military and commercial operations, they are not ships within the meaning of [Subpart II]. As a result, the repainting and repair services on the large yachts in question are not performed on ships.”

Proposed New Definition of a “Ship”

All marine and freshwater vessels that are either:

- (1) 20 meters or more in length regardless of the purpose for which the vessel was constructed;
or,
- (2) less than 20 meters in length and designed and built specifically for military and commercial purposes

EPA's Rationale

- » Unintended regulatory gap
- » Always intended large yachts to be within definition of ship
 - Response to comments on proposed Subpart II created the “gap”

However...

- » EPA never considered the impacts of Subpart II on repair and coating operations on large yachts
 - EPA stated in background document to Subpart II that it intended to regulate pleasure craft under the Boat Building NESHAP
 - Stated in background document that pleasure craft are not included in the definition of a “ship.”
 - No data in the record on impact on large pleasure craft
 - No data that Subpart II VOHAP limits are feasible for pleasure craft
 - Shipyard modeling for Subpart II did not include pleasure craft coating
 - Subpart II was informed by military specifications
 - No large-scale domestic coating operations on large pleasure craft at the time of Subpart II’s promulgation

Problems with Proposal/Relief Requested

- » Large pleasure crafts have unique performance characteristics
 - Gloss/Deformation of Image
 - Owner preference/Need to match existing coating
 - No current low-VOHAP coating can meet performance characteristics
- » Add a new category of Super High Gloss Coating Systems
 - Pleasure Craft greater than 20 meters
 - 640 g/l

Subpart M MMM Applicability

- » If the DFR is withdrawn, EPA stated that it would apply the NESHAP for coating of Miscellaneous Metal Parts and Products (Subpart M MMM) apply to ship repair/coating operations
- » Would then become subject as of January 2, 2007
- » Requested a 1 year compliance extension
 - Automatic stay of compliance deadlines

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Questions?

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