

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

71 Fed. Reg. 78,369

71 Fed. Reg. 78,392

72 Fed. Reg. 8,630

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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 Determination

- “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.”

Withdrawn Proposal to Redefine “Ship”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 at the Time

- 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 Withdrawn Proposal & Remedy

- 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

Status

- Dormant
 - EPA collected data from coatings manufacturers
 - Interested in collecting data from shipyards
- EPA staff are prioritizing Residual Risk
 - Aerospace (Summer 2009)
 - Shipbuilding (“several months after)
- We will have a new Proposed Rule
 - Late 2009/Early 2010