

U. S. ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 63
[AD-FRL-5521-5]
RIN 2060 - AD98

National Emission Standards For Hazardous Air Pollutants For
Shipbuilding and Ship Repair (Surface Coating) Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 15, 1995, the EPA issued national emission standards for hazardous air pollutants (NESHAP) under Section 112 of the Clean Air Act as amended in 1990 for shipbuilding and ship repair (surface coating) operations.

The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology to control hazardous air pollutants. This action revises the compliance date for sources subject to this standard and revises the date for submittal of implementation plans.

Specifically, this action extends the June 13, 1996 deadline for submittal of an implementation plan to December 16, 1996.

The compliance date is extended from December 16, 1996 to December 16, 1997. This action is being taken because the EPA has learned that sufficient time was not provided to prepare the implementation plans and establish the necessary inventory management systems to ensure compliance with the standard.

This action is also being taken to improve coordination of compliance with the NESHAP with the anticipated implementation

of the control techniques guidelines (CTG) requirements for shipbuilding and ship repair facilities.

This action also removes the requirement that implementation plans be approved by the EPA. This requirement is being removed because it was not EPA's intent for the implementation plan to be the mechanism for enforcing the rule.

DATES: The direct final rule will be effective [Insert date 50 days after date of publication in the FEDERAL REGISTER], unless significant, adverse comments are received by [Insert date 30 days after date of publication in the FEDERAL REGISTER]. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be submitted to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-92-11, Room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed Serageldin, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2379.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated category and entities affected by this action include:

<u>Category</u>	<u>Examples of regulated entities</u>
Industry	Facilities that build, repair, repaint, convert, or alter ships. The term ship means any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). NOTE: An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation.
Federal Govt.	Federal Agencies which undertake shipbuilding or repair operations (see above) such as the Navy and Coast guards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §63.782 of the regulation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT"

section.

Any significant and timely adverse comments received on any portion of this direct final rule will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this FEDERAL REGISTER that is identical to this direct final rule. If no significant and timely adverse comments are received on this direct final rule, then the direct final rule will become effective [Insert date 60 days from date of publication in FEDERAL REGISTER] and no further action is contemplated on the parallel proposal published today.

I. BASIS FOR CHANGES TO RULE

A. Compliance Date

The EPA is extending the compliance date from December 16, 1996 to December 16, 1997 to allow time for sources to develop the necessary inventory management systems, administrative controls, and to allow coordination of compliance plans for this rule and the CTG, which is planned for publication in the near future. When the final NESHAP was issued, the EPA selected a one-year compliance period to allow time for sources to deplete existing inventories of coatings and to conduct compliance planning procedures. Since the final rule was issued on December 15, 1995, the EPA has learned that there are a number of companies subject to this

rule that presently do not have inventory management systems necessary to ensure compliance, and that some facilities are relying on outside consultants to develop such systems. In such cases, at least one year is needed to establish the paint inventory management and administrative control system.

Additionally, at the time the final NESHAP was issued, EPA expected to issue final guidance for the CTG for shipbuilding and ship repair (surface coating) operations in the near future. Issuance of this CTG has been delayed. Since control techniques for volatile organic compound emissions could affect the compliance approach selected for the NESHAP, the EPA believes that it is appropriate to extend the compliance date for the NESHAP to allow coordination with rules adopted by States to implement the CTG. Based on the anticipated schedule for issuance of the CTG, the EPA believes that extension of the compliance date to December 16, 1997 should provide sufficient time to allow coordination of compliance planning for both the NESHAP and any applicable State rules.

B. Implementation Plan

The EPA is extending the June 13, 1996 deadline for submittal of implementation plans to December 16, 1996. The deadline for submitting these plans is being extended because the EPA has learned that sufficient time was not provided to

prepare the implementation plans and establish the necessary paint inventory management and administrative control systems to ensure compliance with the standard. Because information available to the EPA during the development of the NESHAP suggested that most shipyards had some form of inventory management system, the EPA expected that 180 days should be sufficient to prepare the implementation plan. Due to information received from the industry since the final rule was issued, the EPA believes that one year is a more appropriate time- frame for selection of the compliance approach and development of the implementation plan. Therefore, this document revises the date for submittal of implementation plans to December 16, 1996.

This action also removes the requirement that implementation plans be approved by the EPA. This requirement is being eliminated since it was not the EPA's intent for the implementation plan to be the mechanism for enforcing the rule and, if the plans are subject to approval, some people might argue that was the role of the plan. The implementation plan will serve to provide guidance and assist in enforcement of the rule.

II. ADMINISTRATIVE REQUIREMENTS

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260-2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The change to the implementation plan requirements merely extends the

date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

B. Executive Order 12866 Review

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "not significant" and therefore, subject to OMB review and the requirements of the executive order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

The Shipbuilding NESHAP promulgated on December 15, 1995 was determined to not be a "significant regulatory action" under Executive Order 12866. Therefore, a regulatory impact analysis was not prepared. The amendments issued today extend dates for submittal of implementation plans and the compliance date and remove the requirement for approval of implementation plans. These changes do not add any additional control requirements or costs. Therefore, this regulatory action does not affect the previous decision and is not considered to be significant.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, the EPA must select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

List of Subjects in 40 CFR Part 63

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

Dated: June 7, 1996.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Part 63, subpart II, of the Code of Federal Regulations is amended as follows:

PART 63--[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart II--National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

2. Section 63.784 is amended by revising paragraph (a) to read as follows:

§63.784 Compliance dates.

(a) Each owner or operator of an existing affected source shall comply within two years after the effective date of this subpart.

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3. Section 63.787 is amended by revising paragraphs (b)(1)(ii) and (b)(4) and by removing and reserving paragraph (b)(2) to read as follows:

§63.787 Notification requirements.

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(b) * * *

(1) * * *

(ii) Not later than one year after the effective date of this subpart, submit the implementation plan to the Administrator along with the notification required by §63.9(b)(2) or (5) of subpart A, as applicable.

(2) (Reserved)

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(4) Major sources that intend to become area sources by the compliance date. Existing major sources that intend to become area sources by the December 16, 1997 compliance date may choose to submit, in lieu of the implementation plan required under paragraph (b)(1) of this section, a statement that, by the compliance date, the major source intends to obtain and comply with federally enforceable limits on their potential to emit which make the facility an area source.

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BILLING CODE 6560-50-P