

Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 7, 2006.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 (subpart A) as follows:

### PART 3—ADJUDICATION

#### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.1000 as follows:

■ a. In paragraph (a) introductory text, remove “at his death” and add, in its place, “at his or her death”; remove “decisions, or” and add, in its place, “decisions or”; and remove “for a period not to exceed 2 years prior to the last date of entitlement as provided in § 3.500(g)”.

■ b. Redesignate paragraph (a)(4) as paragraph (a)(5).

■ c. Add a new paragraph (a)(4).

■ d. In paragraph (d)(4), add “, in support of a claim for VA benefits pending on the date of death” immediately following “before the date of death”.

■ e. Add paragraph (d)(5).

■ f. Add paragraph (i).

The additions read as follows:

#### § 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

(a) \* \* \*

(4) Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents.

\* \* \* \* \*

(d) \* \* \*

(5) *Claim for VA benefits pending on the date of death* means a claim filed with VA that had not been finally adjudicated by VA on or before the date of death. Such a claim includes a deceased beneficiary’s claim to reopen a finally disallowed claim based upon new and material evidence or a deceased beneficiary’s claim of clear and unmistakable error in a prior rating or decision. Any new and material evidence must have been in VA’s possession on or before the date of the beneficiary’s death.

\* \* \* \* \*

(i) *Active service pay.* Benefits awarded under this section do not include compensation or pension benefits for any period for which the veteran received active service pay.

(Authority: 38 U.S.C. 5304(c).)

[FR Doc. E6–22339 Filed 12–28–06; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[EPA–HQ–OAR–2004–0357; FRL–8264–2]

RIN 2060–AO03

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for shipbuilding and ship repair (surface coating) operations (subpart II) promulgated on December 15, 1995 (60 FR 64330), under the authority of section 112(d) of the Clean Air Act (CAA). These direct final rule amendments close an unintended gap in the scope of activities subject to the NESHAP by amending the definition of “ship” to include all marine or freshwater 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 the boat manufacturing at 40 CFR part 63 subpart VVVV. We have also added a definition of “commercial” to further 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 subpart II.

**DATES:** The direct final rule is effective on February 27, 2007 without further notice, unless EPA receives adverse comment by January 29, 2007 or if a public hearing is requested by January 8, 2007. If adverse comments are received or a public hearing is requested, EPA will publish a timely

withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0357 (Legacy No. A–92–11), by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:*

[serageldin.mohamed@epa.gov](mailto:serageldin.mohamed@epa.gov).

3. Fax: (202) 566–1741 and (919) 541–3470.

4. Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible.

5. Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Instructions.** Direct your comments to Docket ID No. OAR–2004–0357. 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.epa.gov/edocket>, 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 EDOCKET, [www.regulations.gov](http://www.regulations.gov), or e-mail. The EPA EDOCKET and the Federal Web sites are “anonymous access” systems, 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 EDOCKET or [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 EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

*Docket.* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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 Air Docket 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.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mohamed Serageldin, Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (E143-03), Research Triangle Park, NC 27711, telephone number (919) 541-2379, electronic 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 Govt .....	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 to provide 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 this 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.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of the direct final rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Comments.* We are publishing the direct final rule without prior proposal

because we do not believe that the changes are controversial. As explained below, the changes are being made to fill a gap in coverage which was inadvertently created in an effort to address an issue raised by commenters in response to the proposed rule (59 FR 62681, December 6, 1994). These amendments are wholly consistent with the intent of the 1995 rule. Moreover, we are issuing these amendments as a direct final rule to ensure that the activities made subject to subpart II by the amended definition of "ship" are covered under subpart II, as opposed to the Miscellaneous Metal Parts and Products (Surface Coating) NESHAP (subpart Mmmm). Subpart Mmmm is a catch-all category intended to cover all metal surface coating activities not specifically covered by another NESHAP. In the absence of these direct final rule amendments, any shipbuilding and ship repair operations performed on vessels that do not meet the definition of ship would not be covered by subpart II and would be subject to subpart Mmmm on the initial compliance date of January 2, 2007.

In the Proposed Rules Section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for Shipbuilding and Ship Repair (Surface

Coating) Operations (40 CFR part 63, subpart II) in the event that this direct final rule is withdrawn. If we receive any adverse comment or a request for a public hearing, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. We will address all public comments received on the proposed rule in a subsequent final rule, we will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule must do so at this time.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 27, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

- I. Why are we amending the rule?
- II. What amendments are we making to the rule?
- III. What are the compliance dates?
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act

### I. Why are we amending the rule?

On December 15, 1995, EPA issued a NESHAP section 112 of the CAA for shipbuilding and ship repair (surface coating) operations (60 FR 64330). The shipbuilding and ship repair rule requires existing and new major sources to control emissions of hazardous air pollutants to the level achievable using maximum achievable (MACT) control technology. The rule applies to shipbuilding and ship repair operations at any facilities that are major sources, that apply marine coatings to "ships" and that meet the definition of "affected source" in 40 CFR 63.782 (Section 63.782 defines "affected source" as "any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons annual marine coatings usage that is subject to this subpart.") "Ship building and ship repair operations," as defined in subpart II (40 CFR 63.782), means "any building, repair, repainting, converting, or alteration of ships."

In the December 6, 1994, proposed rule (59 FR 62681) the term "ship" was defined as "any marine or fresh-water vessel used for military or commercial operations." The term "commercial," in turn, was defined broadly as "any vessel not owned and operated by the U.S. military or the U.S. Coast Guard." During the public comment period on the proposed rule, EPA received public comments which expressed concern that the definition of "ship" in the proposed rule was too broad and could be read to cover facilities engaged in building or repairing vessels that are small in size and are intended for, or used for, only recreational use. In response to these comments, EPA added a definition for "pleasure craft" in the final rule and excluded "pleasure craft" as so defined from the definition of

"ship." Specifically, EPA defined "ship" and "pleasure craft" in the final rule as follows:

- Ship means any marine or fresh-water 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.
- Pleasure craft, which is excluded from the definition of ship, is defined as any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to or chartered by individuals for such purposes shall be considered pleasure craft.

Although EPA had proposed a broad definition for the term "commercial" in the proposed rule, it did not adopt that definition in the final rule issued in 1995. It did, however, use the undefined term "commercial" in defining what constitutes a "ship." In creating the definition of "pleasure craft" in the final NESHAP and excluding pleasure craft from the definition of "ship," we intended that only those vessels less than 20 meters in length used by individuals for nonmilitary and noncommercial purposes (i.e., recreational purposes) would be exempt from subpart II. Our use of the terms "noncommercial, nonmilitary and recreational" in the definition of "pleasure craft" and our failure to adopt the proposed broad definition of "commercial" coupled with the "commercial and military" restriction in the definition of "ship" have led to questions as to whether the final NESHAP applies to shipbuilding and ship repair operations conducted on vessels that measure 20 meters or more in length, that are neither military nor commercial vessels. In reviewing this applicability question, we have determined that vessels measuring 20 meters or more in length that are neither military nor commercial do not meet the current definition of "ship" in 40 CFR 63.782, and are therefore not subject to the requirements of subpart II. Thus, the gap in coverage in the existing regulations relates to the following operations conducted at shipbuilding and ship repair facilities that meet the definition of affected source in 40 CFR 63.782: Shipbuilding and ship repair operations that are conducted on vessels

20 meters or greater in length that are designed and built for nonmilitary and noncommercial operations. Because we had intended to cover such operations in the 1995 final NESHAP, we are issuing these amendments to fill this unintended gap in the existing regulations.

Specifically, these amendments fill the gap by, amending the regulatory definition of "ship" to cover, among other things, all marine or fresh-water vessels measuring 20 meters or more in length; including a definition of "commercial" to clarify which vessels less than 20 meters are subject to subpart II; and eliminating the term "pleasure craft" in subpart II, because that definition has created unnecessary confusion. In reviewing the definition of pleasure craft, we realized that the definition was too limiting because it defined pleasure craft by reference to a vessel's actual use. Although defining pleasure craft in such a manner may be appropriate for purposes of ship repair activities, it is not an appropriate criterion for ship building activities because it is unrealistic to expect a shipbuilder to know definitively at the time of construction of the vessel whether the vessel will be used for recreational or commercial purposes.

In summary, these amendments fill an unintended gap in the coverage of subpart II by establishing that shipbuilding and ship repair operations performed on all marine or fresh-water vessels measuring 20 meters or more in length are subject to the requirements of subpart II regardless of the purpose for which the vessel is designed, built, or used. These amendments also clarify that subpart II 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.

### II. What amendments are we making to the rule?

Specifically, we are: (1) Revising the definition of ship to include all vessels measuring 20 meters or more in length regardless of the purpose for which the vessel is constructed or used and any vessels that are less than 20 meters in length, designed and built specifically for military or commercial purposes; (2) including a definition of commercial to further identify those nonmilitary vessels that are less than 20 meters in length that we consider to meet the definition of ship in subpart II as those that are specifically designed and built for the purposes of generating compensation for products or services; (3) eliminating the term "pleasure

craft"; and (4) excluding from subpart II those coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing at 40 CFR part 63 subpart VVVV. As a result of this action, shipbuilding and ship repair operations on all marine or fresh-water vessels measuring 20 meters or more in length, regardless of the purpose for which the vessel is constructed or used, will now be subject to subpart II, not subpart MMMM which contains the default requirements for any metal surface coating not specifically covered by another NESHAP.

The compliance period for the shipbuilding and ship repair operations that are subject to subpart II for the first time as the result of these amendments is described below in section III.

The revised definitions are as follows:

- Commercial means any enterprise or activity that receives compensation for products and/or services rendered.
- 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 definition 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. For purposes of this subpart, offshore oil and gas drilling platforms are not ships.

### III. What are the compliance dates?

We address the compliance date for those affected sources that conduct the type of operations that are, as the result of these amendments, newly subject to subpart II. Specifically, those existing affected sources that are engaged in the type of shipbuilding and ship repair operations that became subject to the Shipbuilding and Ship Repair NESHAP as the result of these amendments must comply with the requirements applicable to those operations by December 31, 2007. The 1-year compliance deadline allows these affected sources a reasonable period of time in which to deplete existing inventories of coatings and to plan and implement appropriate compliance procedures. Additionally, the 1-year period provides sources an opportunity to obtain compliant coatings and/or identify alternative methods of limiting emissions. The EPA does not expect that any new affected source engaged solely in the operations that are the subject of these amendments will be built;

however, in the event that such a new facility is built, it must comply according to the schedule in 40 CFR 63.6(b). (For purposes of this discussion, a new affected source is an "affected source," as defined by 40 CFR 63.782, at which shipbuilding and ship repair operations are conducted exclusively on vessels 20 meters or greater in length that are designed and constructed for nonmilitary and noncommercial operations, for which construction or reconstruction is commenced after the date of this companion proposed rule.)

## IV. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this direct final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

### B. Paperwork Reduction Act

This action may impose additional information collection burden for sources currently subject to and complying with subpart II. Sources currently complying with subpart II that choose to build or repair marine or fresh-water vessels that are 20 meters or more in length and are not either military or commercial vessels will need to expand their current subpart II recordkeeping and reporting to include these additional shipbuilding and ship repair activities. However, we believe that the additional information collection burden is minimal as the proportion of these activities at most shipyards is minimal; therefore, the information collection requests have not been revised. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0330 (EPA ICR No.1712.05).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying

information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

### C. 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 impacts of the direct final rule on small entities, a small entity is defined as: (1) A small business mostly in the North American Industrial Classification System (NAICS) code 336611 that has less than 1000 or fewer employees; (2) a small governmental jurisdiction that is a government of 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.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local,

and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the direct final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, the direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not apply to small governments. Therefore, the direct final rule is not subject to the requirements of section 203 of the UMRA.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.”

The direct final rule does not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the direct final rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The direct final rule does not have tribal implications, as specified in Executive Order 13175. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because the rule (subpart II) is based on technology performance, not health or safety risks. Furthermore, the direct final rule has been determined not to be

economically significant as defined under Executive Order 12866.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are specified in the direct final rule. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the direct final rule.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. The direct final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 22, 2006.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63, 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—[Amended]**

■ 2. Section 63.781 is amended by redesignating paragraphs (b), (c) and (d) as (c), (d) and (e) respectively and adding a new paragraph (b).

#### **§ 63.781 Applicability.**

\* \* \* \* \*

(b) The provisions of this subpart do not apply to coating activities subject to emission limitations or work practices under 40 CFR part 63 subpart VVVV.

\* \* \* \* \*

■ 3. Section 63.782 is amended by adding a definition for “Commercial”, removing the definition of “Pleasure craft”, and revising the definition of “Ship”:

#### **§ 63.782 Definitions.**

\* \* \* \* \*

*Commercial* means any enterprise or activity that receives compensation for products and/or services rendered.

\* \* \* \* \*

*Ship* means all marine or fresh-water vessels that are either 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This definition 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. For purposes of this subpart, offshore oil and gas drilling platforms are not ships.

\* \* \* \* \*

■ 4. Section 63.784(a) is revised 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, except that the owner or operator of an existing affected source that conducts shipbuilding and ship repair operations that first became subject to this NESHAP on [date of publication of this direct final rule and

FR cite], shall comply with the requirements of this subpart, as they apply to those operations, by December 31, 2007.

\* \* \* \* \*

[FR Doc. E6-22426 Filed 12-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 180**

**[EPA-HQ-OPP-2006-0769; FRL-8093-6]**

#### **Zeta-Cypermethrin; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of the insecticide zeta-cypermethrin, in or on almond, hulls; animal feed, nongrass, group 18, forage; animal feed, nongrass, group 18, hay; berry, group 13; cilantro, leaves; food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments; fruit, pome, group 11; fruit, stone, group 12; grape; grass, forage, group 17; grass, hay, group 17; nut, tree, group 14; peanut; rapeseed; sunflower; sunflower, refined oil; turnip, greens; vegetable, cucurbit, group 9; and vegetable, root and tuber, group 1, except sugar beet. FMC Corporation and Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective December 29, 2006. Objections and requests for hearings must be received on or before February 27, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0769. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available in the electronic docket at <http://www.regulations.gov> or, if only available in hard copy, at the OPP Regulatory Public Docket in Room S-4400, One Potomac Yard (South Building), 2777 South Crystal Drive, Arlington, VA 22202-3553. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

#### **FOR FURTHER INFORMATION CONTACT:**

Linda DeLuise, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; telephone number: (703) 305-5428; e-mail address: [deluise.linda@epa.gov](mailto:deluise.linda@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document