

U.S Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



AUG 3 2001

John McKnight, Director
Environmental and Safety Compliance
National Marine Manufacturers Association
1819 L Street, N.W.-Suite 700
Washington, D.C. 20036

Dear Mr. McKnight:

Thank you for your July 11,2000 letter to the Occupational Safety and Health Administration's (OSHA's) Directorate of Compliance Programs (DCP). This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question or situation not delineated within your original correspondence. You had specific questions with respect to the application of OSHA safety and health standards to the recreational boat building industry .Please excuse our delay in responding to your letter .

Your letter requests OSHA to clarify whether the recreational boat building industry is regulated under OSHA 's general industry standards in 29 CFR Part 1910 or OSHA 's standards for shipbuilding in 29 CFR Part 1915. According to your letter, the industry has understood that it was regulated under Part 1910, but OSHA inspections have applied Part 1915 to recreational boat building facilities that are adjacent to navigable waters.

Shipbuilding and Recreational Boat Building

Your letter states that shipbuilding, unlike boat building, is similar to large building construction, and that the Part 1915 requirements for shipyards do not appropriately address the hazards and processes in recreational boat building facilities.

Your letter notes that the recreational boat building process is similar to operating a wood working shop. You make the following points:

- Recreational boat building is a repeatable, production line process performed in a manufacturing plant specifically designed for the type of boats being built. The average recreational plant manufactures 30 to 35 boats per day.
- The majority of recreational boats are manufactured of fiberglass reinforced plastic, and some small boats are made of aluminum.

- Boat building is classified in a different SIC code, SIC 3732, from shipbuilding, which is SIC 3731. The L WDI rate for boat building is less than half that of shipbuilding.
- The building of ships in shipyards presents hazards quite different from the production of small recreational boats, such as work at high elevations, fall hazards over water, extensive use of moveable rather than permanent scaffolding, and welding and confined space hazards that are unique to the construction of large vessels.

Your letter indicates that the processes used in manufacturing fiberglass boats include an initial gel coat and lamination phase, followed by an assembly phase where small parts, carpet and mechanical components are installed. Aluminum boat manufacturing involves the cutting and bending of aluminum sheets into the proper size and shape, and the welding or riveting of these pieces together, followed by painting and installation of components.

OSHA Standards and Compliance Policy

OSHA's general compliance policy has been that Part 1910 applies to boat building operations that are located inland, i.e., are not on or adjacent to the navigable waters. OSHA has also stated, however, that Part 1915 applies to boat building facilities if they are located on or adjacent to the navigable waters. This position was set forth in a 1978 compliance directive (Program Directive 200-71; March 14, 1978). The Directive clarified that the Part 1915 standards are special vertical standards written for and applicable to workplace hazards found in shipyards and boat yards located on the navigable waters, which include adjoining shore installations such as wharves, drydocks, graving docks, terminals, building ways, marine railways, and other areas customarily used by the employer in shipbuilding. By contrast, the Directive noted that there are many small vessel manufacturing establishments that are not on the navigable waters that engage in methods, operations, and processes of the type found in general industry, and that these establishments are not considered shipyards or boat yards under Part 1915. Examples of products produced in these establishments include small fiberglass boats. The 1978 Directive was canceled for nonsubstantive reasons in 1985, but the principle that Part 1915 applies to boat building on the navigable waters and does not apply to boat building not so located has continued.

This position regarding the applicability of Part 1915 is based on the language of the pertinent standards. Part 1915 was originally issued as a safety regulation under the Longshoremen's and Harbor Workers' Compensation Act and was subsequently adopted as an OSHA standard under Section 6(a) of the OSH Act. See 29 CFR 1910.15. Part 1915 by its terms applies to employment on the navigable waters in "shipbuilding," which is defined as the construction of any "vessel," a term defined in 29 C.F.R. Part 1915.4(k) as "every description of watercraft ... capable of being used as a means of transportation on water." Part 1915 by its terms applies to the construction of any vessel without regard to size or intended use. The literal language of the regulation does not allow for an exemption for the building of small recreational boats.

Nonetheless, we agree with your point that type of production process you describe for small recreational boats is closely akin to many processes covered by the general industry standards in Part 1910, and differs significantly from the processes involved in shipbuilding. It is OSHA's view, based on a review of our compliance experience in boat building standards of 29 CFR Part 1910 more closely address the types of operations and hazards of recreational boat building than do the shipyard standards of 29 CFR Part 1915. Further, Part 1910 standards are equally protective of workers, compared with the requirements of Part 1915 that could be enforced in recreational boat building.

Because of these reasons, OSHA will review all possible options to further address and clarify the applicability of Parts 1910 and 1915 to recreational boat building. As part of this review process, options may include the undertaking of limited rulemaking pursuant to Section 6(b) of the Act to amend the scope provisions of the pertinent standards in order to clarify that Part 1910 and not Part 1915 applies to recreational boat building, whether adjacent to or away from the navigable waters.

With respect to the time necessary to complete this process, OSHA will continue to follow the policy that recreational boat building facilities not located on or adjacent to navigable water are subject to the general industry standards in Part 1910. With respect to recreational boat building facilities located on or adjacent to navigable waters, OSHA will consider violations of Part 1915 by recreational boat builders using the types of processes your letter describes to be *de minimis*, if the employer is in compliance with the pertinent general industry standards in Part 1910, which provide equivalent protection. Under Section 9(a) of the Act, violations that are *de minimis* carry no penalty, do not require abatement, and do not result in the issuance of citations. OSHA will issue compliance guidance to its field offices to this effect in the near future.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Should you have any further questions, please feel free to call the Division of Maritime Compliance at (202) 693-2399.

Sincerely,


R. Davis Layne
Acting Assistant Secretary