

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 67****[CGD 94-040]****RIN 2115-AE85****Vessel Rebuilt Determinations****AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending its regulation to clarify the standard for determining when work on a vessel performed outside of the U.S. constitutes a foreign rebuilding, which results in a loss of coastwise privileges. Clarifying this standard will help vessel owners and operators make better business decisions regarding work to be performed on their vessels. This rule adopts a notice of proposed rulemaking (NPRM) titled Vessel Rebuilt Determinations (CGD 94-040; 60 FR 17290) published on April 5, 1995, as final with minor changes.

EFFECTIVE DATE: This final rule is effective on June 21, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94-025), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LTJG Michael Antonellis, National Maritime Center at (703) 235-8447.

SUPPLEMENTARY INFORMATION:**Regulatory History**

Two public meetings were held, both preceded by a notice in the Federal Register. The first meeting was on November 16, 1993 (58 FR 51298), and the second on February 15, 1994 (59 FR 725). The stated purpose of the public meetings was to obtain public input concerning whether the Coast Guard should undertake rulemaking to develop clearer standards for vessel rebuilt determinations.

On May 10, 1994, the Coast Guard published a policy statement in the Federal Register (CGD 93-063; 59 FR 24060) announcing that it was planning to undertake rulemaking regarding vessel rebuilt determinations.

As indicated above, on April 5, 1995, the Coast Guard published the NPRM. In the NPRM, the Coast Guard proposed to clarify when a vessel is deemed to

have been rebuilt outside the United States, thereby losing the privilege of engaging in the coastwise trade.

Background and Purpose

When Congress enacted the Merchant Marine Act, 1920 (46 U.S.C. app. § 883), it included a provision to provide for a protected trade. Section 27 of the Jones Act generally prohibited the transportation of merchandise in the coastwise trade except in vessels built in and documented under the laws of the United States and owned by citizens of the United States.

In 1956, Congress amended Section 27 by enacting what is known as the "Second Proviso." Under the proviso as enacted, a vessel of more than 500 gross tons entitled to engage in the coastwise trade which is later rebuilt outside the United States permanently loses the right to engage in the coastwise trade. Further, the proviso originally required the owner of a vessel of more than 500 gross tons documented in the United States which is rebuilt outside the United States to make a report of the circumstances of the rebuilding to the Secretary of Transportation.

The Second Proviso was amended numerous times as discussed in the NPRM and now applies to all vessels engaged in coastwise trade, regardless of tonnage. It was implemented by the Coast Guard primarily by regulations at 46 CFR § 67.177. The regulatory standard in § 67.177 states that a vessel is rebuilt when "any considerable part of its hull or superstructure is built upon or substantially altered." While the wording of the regulatory standard has remained stable over the years, the Coast Guard's administration of the standard has changed and is fully discussed in the NPRM.

Discussion of Comments and Changes

The Coast Guard received three letters in response to the NPRM. Two letters specifically complimented the Coast Guard for its efforts in providing the industry with clearer standards relating to vessel rebuilt determinations. Generally, the three letters addressed the six matters discussed below.

First: Two comments suggested that the Coast Guard provide a list of items, such as furnishings and fittings, that could be excluded from being considered as part of the hull and superstructure for purposes of making vessel rebuilt determinations. In the preamble to the NPRM, the Coast Guard identified a number of items which it has previously considered to be furnishings and fittings. This list, which is not exhaustive, may be used for

guidance. The Coast Guard believes that providing a specific list would work to the detriment of vessel owners and limit the Coast Guard's flexibility to determine whether those items not included on the list should or should not be excluded.

Second: One comment recommended that the numerical lower and upper parameters of 5 percent to 10 percent be adjusted to provide greater flexibility. Paragraph (b) of § 67.177 of the NPRM establishes numerical parameters for rebuilt determinations for vessels, the hull and superstructure of which are constructed of steel or aluminum. The Coast Guard agrees that adjusting the minimum threshold to 7.5 percent is appropriate because that level reflects the Coast Guard's past determinations of the percentage of steelweight that does not constitute a rebuilding. However, the Coast Guard finds that raising the maximum threshold would not reflect past Coast Guard practices. Therefore, in order to adopt a standard that is consistent with past Coast Guard practices, the numerical lower and upper parameters in the final rule are set at 7.5 percent and 10 percent. The Coast Guard's National Maritime Center, after consultation with the Maritime Administration and the maritime industry, will reevaluate these minimum and maximum threshold levels in the future. Based on the history of vessel rebuild determinations, the Coast Guard may propose additional changes to these levels and perhaps other aspects of vessel rebuilt determinations. A shipowner may still apply for a preliminary rebuilt determination regardless of the level of work being done.

Third: One comment favored the use of a "surface area comparison" as opposed to the "comparability" standard proposed for vessels built of materials other than steel or aluminum. The comparability approach provided in paragraph (c) of § 67.177 of the NPRM requires that the applicant for a rebuilt determination calculate to the maximum extent practicable what the steelweight of the vessel as a whole would be if it were constructed of steel or aluminum. This standard has been tested over time and determined to work effectively.

Fourth: One comment indicated a need for the Coast Guard to clarify that repairs in kind should be exempted from the standards applicable to vessel rebuilt determinations. The Coast Guard believes that vessels undergoing repairs overseas should continue to report these repairs and provide the necessary information to ensure that the Coast Guard can make an independent

determination that the vessel has not been rebuilt.

Fifth: One comment requested that the term "vessel steelweight" be clarified. Vessel steelweight is the actual weight of the hull and superstructure without furnishings and outfit, machinery, and fluids. The term "vessel steelweight" is intended to mean the same as "discounted lightship weight."

Sixth: One comment expressed concern that if a vessel is determined to be rebuilt, it may also be considered a new vessel and, as a result, be subject to the provisions of the Oil Pollution Act of 1990 (OPA) (Pub. L. 101-380). A rebuilt determination will not result in a vessel being reclassified as a new vessel. If a vessel is subject to this regulation and is determined to be rebuilt outside of the U.S. pursuant to this rule, then that vessel will lose its coastwise privileges. Whether a vessel is subject to the applicability of OPA requirements is in no way determined by this rule. That a vessel loses its coastwise privileges because it has been determined to have been rebuilt outside of the U.S. does not mean necessarily that the vessel will be considered essentially a new vessel and subject to OPA requirements.

After reviewing and considering these comments, the Coast Guard is adopting the NPRM as final with minor modifications. In effect, the term "Commandant" wherever it appeared in the NPRM was replaced with the term "National Vessel Documentation Center" (NVDC). The final rule raises the lower parameter of a rebuilt determination to from 5 percent to 7.5 percent. The Coast Guard has undergone a significant reorganization and, as a result, established the NVDC in West Virginia to streamline the vessel documentation program. The public was informed of the establishment of NVDC in a Federal Register notice published on June 15, 1995 (60 FR 31602).

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do not require an assessment of potential costs and benefits under section 6(a)(3) of that order. They have not been reviewed by the Office of Management and Budget under that order. However, they are considered significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) due to the interests expressed by a segment of the maritime industry and the Government of Canada.

The Coast Guard expects the economic impact of these regulations to

be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations merely clarify existing policies and practices followed in evaluating rebuilt determinations. As such, the changes are administrative in nature and provide better guidance to vessel owners planning for work to be performed on their vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether these regulations will have a significant economic impact on a substantial number of small entities. "Small entities" may include: (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the economic impact of these regulations to be minimal because they clarify existing policy and practices. The changes to the existing regulations are administrative in nature and are designed to provide better guidance to vessel owners planning to perform work on their vessels. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that these regulations will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements.

This regulation contains collection-of-information requirements in 46 CFR 67.177. However, these collection-of-information requirements are the same as those contained in the existing regulations which have been previously approved by OMB and assigned Control No. 2115-0110. This regulation adds no new or additional collection-of-information requirements. The regulations will reduce paperwork submissions by providing sufficiently clear guidance that many of the applications for preliminary rebuilt determinations may become unnecessary.

Federalism

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is administrative in nature and will have no significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

§ 67.19 [Amended]

2. In § 67.19(d)(3), remove "67.177(a)" and add, in its place, "67.177".

§ 67.21 [Amended]

3. In § 67.21(c), remove "67.177(a)" and add, in its place, "67.177".

4. Section 67.177 is revised to read as follows:

§ 67.177 Application for foreign rebuilding determination.

A vessel is deemed rebuilt foreign when any considerable part of its hull or superstructure is built upon or substantially altered outside of the United States. In determining whether a vessel is rebuilt foreign, the following parameters apply:

(a) Regardless of its material of construction, a vessel is deemed rebuilt when a major component of the hull or superstructure not built in the United States is added to the vessel.

(b) For a vessel of which the hull and superstructure is constructed of steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes more than 10

percent of the vessel's steelweight, prior to the work, also known as discounted lightship weight.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes more than 7.5 percent but not more than 10 percent of the vessel's steelweight prior to the work.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes 7.5 percent or less of the vessel's steelweight prior to the work.

(c) For a vessel of which the hull and superstructure is constructed of material other than steel or aluminum—

(1) A vessel is deemed rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 10 percent of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(2) A vessel may be considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to more than 7.5 percent but not more than 10 percent of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(3) A vessel is not considered rebuilt when work performed on its hull or superstructure constitutes a quantum of work determined, to the maximum extent practicable, to be comparable to 7.5 percent or less of the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum.

(d) For a vessel of mixed construction, such as a vessel the hull of which is constructed of steel or aluminum and

the superstructure of which is constructed of fibrous reinforced plastic, the steelweight of the work performed on the portion of the vessel constructed of a material other than steel or aluminum will be determined, to the maximum extent practicable, and aggregated with the work performed on the portion of the vessel constructed of steel or aluminum. The numerical parameters described in paragraph (b) of this section will then be applied to the aggregate of the work performed on the vessel compared to the vessel's steelweight prior to the work, calculated as if the vessel were wholly constructed of steel or aluminum, to determine whether the vessel has been rebuilt.

(e) The owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements which is altered outside the United States and the work performed is determined to constitute or be comparable to more than 7.5 percent of the vessel's steelweight prior to the work, or which has a major component of the hull or superstructure not built in the United States added, must file the following information with the National Vessel Documentation Center within 30 days following the earlier of completion of the work or redelivery of the vessel to the owner or owner's representative:

(1) A written statement applying for a rebuilt determination, outlining in detail the work performed and naming the place(s) where the work was performed;

(2) Calculations showing the actual or comparable steelweight of the work performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the work performed to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the work performed; and

(4) Any further submissions requested by the National Vessel Documentation Center.

(f) Regardless of the extent of actual work performed, the owner of a vessel currently entitled to coastwise, Great Lakes, or fisheries endorsements may, as an alternative to filing the items listed in paragraph (e) of this section, submit a written statement to the National Vessel Documentation Center declaring the vessel rebuilt outside the United States. The vessel will then be deemed to have been rebuilt outside the United States with loss of trading privileges.

(g) A vessel owner may apply for a preliminary rebuilt determination by submitting:

(1) A written statement applying for a preliminary rebuilt determination, outlining in detail the work planned and naming the place(s) where the work is to be performed;

(2) Calculations showing the actual or comparable steelweight of work to be performed on the vessel, the actual or comparable steelweight of the vessel, and comparing the actual or comparable steelweight of the planned work to the actual or comparable steelweight of the vessel;

(3) Accurate sketches or blueprints describing the planned work; and

(4) Any further submissions requested by the National Vessel Documentation Center.

Note: A statement submitted in accordance with paragraph (f) of this section does not constitute an application for a rebuilt determination and does not require payment of a fee.

Dated: March 18, 1996.

A.E. Henn,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 96-9653 Filed 4-19-96; 8:45 am]

BILLING CODE 4910-14-M