

**Before the
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD
MARITIME SAFETY AND SECURITY COUNCIL (CG-0943)
Washington, DC 20593-0001**

In the Matter of)
)
Petition for Rulemaking to Amend)
the Coast Guard's Regulations Concerning) Docket No.: USCG-2010-1124
Foreign Rebuild Determinations,)
46 C.F.R. § 67.177)

COMMENTS OF PETITIONERS IN SUPPORT OF THE PETITION

SHIPBUILDERS COUNCIL OF AMERICA
CROWLEY MARITIME CORPORATION
MATSON NAVIGATION COMPANY
HORIZON LINES, INC.
PASHA HAWAII TRANSPORT LINES LLC
OVERSEAS SHIPHOLDING GROUP, INC.
TOTEM OCEAN TRAILER EXPRESS, INC.
THE TRANSPORTATION INSTITUTE
THE AMERICAN MARITIME CONGRESS
THE AMERICAN MARITIME OFFICERS SERVICE
THE AMERICAN WATERWAYS OPERATORS
THE MARITIME INSTITUTE FOR RESEARCH AND INDUSTRIAL
DEVELOPMENT

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The Shipbuilders Council of America, Crowley Maritime Corporation, Matson Navigation Company, Horizon Lines, Inc., Pasha Hawaii Transport Lines LLC, Overseas Shipholding Group, Inc., Totem Ocean Trailer Express, Inc., the Transportation Institute, the American Maritime Congress, the American Maritime Officers Service, the American Waterways Operators, and the Maritime Institute for Research and Industrial Development (jointly, the “Petitioners”) hereby respond to the U.S. Coast Guard’s request for comments regarding the rulemaking petition filed in the above-captioned proceeding. *See* 76 Fed. Reg. 10553 (Feb. 25, 2011). In its request for comments, the Coast Guard has asked for general comments “on whether [a] rulemaking would be beneficial.” *Id.* at 10554. Rather than reiterate each of the points raised in the petition for rulemaking, Petitioners submit that initiating a rulemaking to amend the Coast Guard’s current regulations concerning foreign rebuild determinations at 46 C.F.R. § 67.177 is necessary and would be beneficial for the following reasons.

First, and most fundamentally, a rulemaking to amend the current regulations is necessary to resolve a number of industry disputes over what types and amounts of foreign shipyard work on vessels are and are not permissible under the Jones Act. *See* 46 U.S.C. §§ 12101(a) and 12132(b). Perhaps the single greatest area of confusion over the Coast Guard’s regulations stems from the Coast Guard’s application of the “major component” test. *See* 46 C.F.R. § 67.177(a). To remedy this, the term “major component” should be specifically defined in the regulations, and the Coast Guard’s standards of what constitutes a “major component” needs to be clarified. Moreover, the industry needs greater clarity as to how certain types of steel work are counted under the steel weight percentage tests in the regulations, 46 C.F.R. § 67.177(b). For example, rather than having a discretionary threshold of between 7.5%-10% (as exists in the current

regulations), whereby certain work *may or may not* be considered a rebuilding under the Coast Guard's regulations, a clear "bright line" standard of 10% (as proposed by the Petitioners in Exhibit A of the Petition) would provide the industry with much greater predictability in the Coast Guard's approach.

In recent years, various parties have come to starkly different conclusions when attempting to apply the Coast Guard's current "major component" and "considerable parts" tests to a given project, which has led to a number of controversial decisions by the Coast Guard applying these standards. A rulemaking to amend the current rules would be beneficial because it would establish clear and uniform guidance to the industry regarding the Coast Guard's standards for determining when certain work on a vessel in a foreign shipyard constitutes a rebuilding of that vessel pursuant to the Second Proviso to the Jones Act.

Second, a rulemaking proceeding would resolve a number of ambiguities and open questions in the current rules that are currently left unanswered by mixed court decisions. In addition to questions like what constitutes a "component" under the regulations, and when a component is deemed to be a "major component," there are numerous others. For example, does it matter under the Coast Guard's regulations whether a component is lifted onto a vessel as one discrete item or piece-by-piece? When calculating steelwork, does the Coast Guard consider both steel added and steel removed in the foreign shipyard? What specific kinds of information are applicants for a rebuild determination required to submit in support of those applications? What procedures are in place for the Coast Guard to verify the accuracy of the materials submitted by the applicant? What is the relationship between the "major component" test and the "considerable parts" test? Petitioners are not alone in wanting answers to these and other critical questions. During a 2008 hearing, Congress also expressed concerns to the Coast Guard

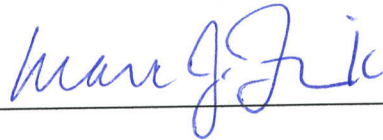
about many of these lingering questions, noting a “lack of clarity regarding what can be done to a vessel in a foreign shipyard within the parameters that have been established by [the Coast Guard’s] regulations.” *See Rebuilding Vessels Under the Jones Act*, Hearing Before the U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Marine Transportation, 110th Cong. 110-137 (2008) at 2. Thus, a rulemaking would be beneficial because it would allow the Coast Guard to address these and other important questions directly, and in so doing, avoid any further confusion from the courts.

Third, a rulemaking would be beneficial because it would lead to greater transparency of the rebuild application process. The procedural structure that is currently in place results in the Coast Guard hearing only from those who seek to perform work in foreign shipyards, and not from those who might also have relevant information regarding whether the proposed work would constitute a foreign rebuild. When questions arise about certain foreign steelwork projects, the Coast Guard’s procedures for making determinations must be more transparent so that all interests affected by the application can be heard, and the Coast Guard has a full and complete record upon which to make an informed decision. Adding procedural safeguards proposed by Petitioners to the foreign rebuild application process will address this issue, such as: (1) requiring applicants to submit more detailed information to the Coast Guard about foreign shipyard work, (2) requiring notice of applications in the Federal Register, (3) adding appeal procedures for interested parties to challenge Coast Guard rulings, and (4) requiring applicants to submit final details of all foreign shipyard work.

Finally, Petitioners believe that it is important to note that a significant number of interested members of the shipping public have signed onto and supported this Petition. Because the Petitioners represent virtually all of the major sectors of the shipping industry that would be

affected by any regulatory changes (including shipyards, maritime labor, U.S.-flag ship owners and operators, and liner, tanker, and roll-on/roll-off vessel operators), all of whom have come to an agreement on the need for revised regulations and have jointly proposed draft regulatory language to the Coast Guard, Petitioners respectfully submit that following this proceeding, it should not be necessary for the Coast Guard to seek any additional information from the industry on whether a rulemaking is necessary. The Coast Guard now has before it everything it needs to initiate a rulemaking. Accordingly, Petitioners hereby request that the Coast Guard issue a Notice of Proposed Rulemaking shortly, in order for a new final rule to be in place as soon as possible.

Respectfully submitted,



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