

U.S. Coast Guard Issues New Jones Act Build Guidance



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U.S. maritime laws generally referred to as the “Jones Act” restrict U.S. domestic commerce to “U.S.-built” vessels. Because the rules governing what constitutes “U.S.-built” are technical and esoteric, and the consequences of not meeting the standards can be financially catastrophic for the shipyard or vessel owner or both, the U.S. Coast Guard has a regulatory process where it provides advance guidance confirming that a prospective project satisfies the applicable criteria. On October 4, 2017, the Coast Guard issued build determinations for the two Kanaloa-class combination container and roll-on/roll-off vessels to be constructed by the National Steel and Shipbuilding Company (NASSCO).

These build determinations have taken on added importance because of the *America’s Finest* project. That fishing vessel was apparently determined to have been built with foreign steel fabricated abroad, under the Coast Guard’s interpretations, after the fact, making the completed vessel ineligible for the U.S. fisheries trade. Under those interpretations, the working abroad of steel plate in any way, including forming, marking, cutting, drilling, or beveling, for purposes of the project, is disqualifying.

In the October 4 determination, the Coast Guard re-confirmed that steel plate, weld rod and other materials used to construct the vessel of foreign origin can be included without affecting the “U.S.-built” status of the vessel, provided the foreign materials are delivered in “standard mill shapes and size.” This includes foreign-sourced structural shapes “consisting of angle types typically referred to as ‘Asian angles’ or as ‘unequal angles’ and ‘inverted angles.’”

Coast Guard regulations more generally provide that a vessel must be assembled entirely in the United States and all “major components of the hull and superstructure” must be fabricated in the United States. Through a number of precedents, the Coast Guard has determined that a “component” must exceed 1.5 percent of the vessel’s steelweight to be considered “major.” Numerous items installed on a vessel are not considered “components of the hull and superstructure,” such as the main and auxiliary engines. Moreover, to be considered part of the “hull,” a component must form part of the watertight envelope of the vessel.

These regulations were applied to the NASSCO project to provide that a rudder trunk casting and headbox, a stern box, stern tube casting and a stem casting, a stern quarter ramp, and engine room side access hatch and miscellaneous watertight closures (doors and hatches) were all “components of the hull or superstructure.” In each instance, the Coast Guard determined that these items formed part of the watertight closure of the vessel and

therefore constituted part of the hull. In the end, all could be sourced, according to the Coast Guard, abroad because they did not aggregate 1.5 percent of the vessel's steelweight.

NASSCO also argued that the stern casting should not be included in the calculations because castings of the size and type needed are not made in the United States. The Coast Guard rejected this argument, pointing out that the U.S.-build requirement does not have an intrinsic waiver authority and that the purpose of the U.S.-build requirement—to promote U.S. shipbuilding—was best served by not granting such a waiver. It is not clear if the general waiver law, which is usually associated with Jones Act waivers but actually extends to all “navigation or vessel inspection laws,” was considered for this purpose.

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