

U.S. Department of
Homeland Security

United States
Coast Guard



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16713/5/3
June 14, 2013

Mr. Edward Washburn
GM Engineering and Technical Services
Horizon Lines Inc.
600 E. Las Colinas Blvd., Suite 600
Dallas, TX 75039

Dear Mr. Washburn:

We are responding to your letter dated May 10, 2013 (but not received until May 21, 2013), with enclosures, by which you requested a preliminary foreign rebuild determination, in accordance with 46 C.F.R. § 67.177(g), with respect to proposed work to be done in a foreign shipyard to the vessels HORIZON SPIRIT, official number 624457, and HORIZON RELIANCE, official number 625873 (together, the "Vessels").

Your letter and its enclosures have provided extensive detail, including narrative descriptions, architectural drawings and weight calculations, concerning the work proposed to be done. In short, however, Horizon intends to replace the Vessels' steam propulsion and auxiliary plants with geared medium speed diesel dual (LNG and liquid) fuel engine plants in order, as stated in your submission, to improve the fuel efficiency and environmental performance of the Vessels.

You have requested a preliminary determination that, in accordance with the regulatory standards set forth at 46 C.F.R. § 67.177 with regard to work done in foreign shipyards to vessels built in the United States (as these Vessels originally were), the Vessels will not be deemed to have been rebuilt foreign and, consequently, that their coastwise eligibility will not be adversely affected by the proposed work.

46 C.F.R. § 67.177 establishes a two-part test to determine whether any considerable part of a vessel's hull or superstructure has been built upon or substantially altered outside of the United States. The consequence of such a determination is that such a vessel would be deemed "rebuilt foreign" and, as a further consequence of that determination, it would no longer be eligible to engage in the coastwise trades of the United States.

The first test, which has come to be known as the "major component test", requires that a vessel be deemed rebuilt foreign "when a major component of the hull or superstructure not built in the United States is added to the vessel" 46 C.F.R. § 67.177(a). Although the term "major component" is not defined by statute or regulation, by longstanding agency practice, affirmed by the Courts (Shipbuilders Council of America v. U.S. Coast Guard, 578 F. 3d 234 (4th Cir. 2009)), "major component" has come to refer to new, completely-constructed units, built separately from

and added to the vessel, that weigh more than 1.5 percent of the steelweight (or discounted lightship weight) of the vessel prior to the work.

Under the second test, which has come to be known as the “considerable part test”, only a certain quantity of hull or superstructure work can be performed on a coastwise-qualified vessel outside of the United States without risk of the loss of its coastwise eligibility. For vessels constructed of steel, as in this case, “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” 46 C.F.R. § 67.177(b)(3).

For purposes of the tests described above, the terms “hull” and “superstructure” are defined at 46 C.F.R. § 67.3, as follows (in pertinent part):

“Hull” means the shell, or outer casing, and internal structure below the main deck which provides both the flotation envelope and structural integrity of the vessel in its normal operations.

‘Superstructure’ means the main deck and any other structural part above the main deck.”

In order to aid our assessment of your proposal we have referred your submission to the Coast Guard’s Naval Architecture Division for their review, with particular focus on (i) the various estimated steelweights provided, and (ii) your categorization of the work as between those portions deemed structural and which would implicate the hull or superstructure of the Vessels and those deemed otherwise. A copy of the NAD’s review and findings is attached hereto and made a part hereof as Exhibit A.

First, it is well-established by prior determinations applying the regulatory standard at issue here that there is no prohibition against the incorporation into a U.S. built vessel outside of the United States of items, whether or not foreign-sourced, which are not structural components of either the hull or superstructure of a vessel and, as such, have generally come to be known as “outfit”. For a fuller discussion, if not an exclusive list, of such items see the Coast Guard’s Notice of Proposed Rulemaking on Vessel rebuilt Determinations at 60 FR 17290, 17291 (April 5, 1995).

Among such items in this case we would include, in concurrence with the NAD: (i) with respect to the new propulsion systems, the new propulsion machinery items themselves (which will be free-standing, self-supporting and independent of the Vessels’ structure), as well as associated auxiliary systems and other related appurtenances (such as cooling, exhaust, electrical distribution, automation, and ventilation systems), (ii) with respect to the new LNG fuel tanks and fuel system, the tanks (which will be installed on new foundations supported from ship structure and, in accordance with the review and conclusions of the NAD and consistent with past determinations with regard to such tanks, will not implicate the structure of either hull or superstructure), as well as associated auxiliary systems and other related appurtenances (such as ventilation, electrical, piping and automation systems), and (iii) with respect to the conversion of Hatch 7 to accept refrigerated containers, various access and cell guide modifications and associated auxiliary systems and other related appurtenances (such as ventilation and electrical systems).

Second, the steelweight calculations (of the Vessels as well as of both the steel proposed to be removed and added) that you provided as part of your submission were, at our request, reviewed by the NAD for the purpose of (i) identifying and delineating all such steel work which would implicate the hull or superstructure of the Vessels in any way, and (ii) confirming the likely accuracy of the steelweight calculations associated with that work, as well as the steelweight of the Vessels themselves prior to the work, against which, in accordance with the regulatory tests, the steelweight associated with the proposed work must be measured.

With regard, in particular, to the steelweight of the Vessels prior to the work, we accept the finding of the NAD that appropriate steelweight, for the purpose of application of the regulatory tests herein, is 10,680 Ltons (10,874 Mtons).

Third, with regard to the first prong of the test established by 46 C.F.R. § 67.177, the “major component test”, you have represented, and the NAD has generally concurred after review, that the largest discrete and separately constructed structure to be added to either Vessel will be a new main deck replacement section a steelweight of 26 tons (or, as found by the NAD, 25.6 Mtons), or 0.235% of the Vessels’ steelweight. Thus, the steelweight of this component falls well below the standard of 1.5% of the Vessels’ steelweight at which it would be characterized as a major component. Consequently, we find that your proposal would not violate the “major component test” of 46 C.F.R. § 67.177. However, that steelweight will be taken into account when measuring your proposal against the second prong of the regulatory standard, the “considerable part test”.

Finally, with regard to the second prong of the test established by 46 C.F.R. § 67.177, the “considerable part test”, we confirm your understanding that the rule consistently applied in calculating the steelweight of relevant work done to a vessel is to count the greater of the steel removed or the steel added. In this case, with the benefit of the review and conclusions of the NAD as our guide, we note that the greater of the steel to be removed or steel to be added will be the steel to be removed in the amount of 58 Mtons, or 0.533% of either Vessels’ discounted lightship steelweight. As this percentage falls well below the 7.5% allowed by 46 C.F.R. § 67.177(b)(3), we find that performance of the work described would also not violate the “considerable part test”.

For these reasons we conclude, and confirm, that performance of the work as described to the Vessels outside of the United States will not result in either Vessel being deemed to have been rebuilt foreign and, consequently, will not adversely affect either Vessels’ eligibility to engage in the coastwise trades of the United States.

We require that you confirm to this office in writing following completion of the work that the

work actually done to each Vessel is as you have described it or, if not in any respect, that you provide documentation of the actual work, as done, with supporting calculations and appropriate drawings and descriptions.

Sincerely



TIMOTHY V. SKUBY
CAPT, USCG Retired
Director