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Coast Guard Issues Policy on Keel Laying Date

The U.S. Coast Guard has published new guidance setting forth its interpretation of when a vessel's keel is considered laid and building progression standards to determine what may be accepted in establishing the build date for a vessel. Shipyards and prospective shipowners and operators should be cognizant of this new guidance and its significant implications on the regulatory requirements applicable to a vessel.

NEW DEVELOPMENT

The U.S. Coast Guard has issued a Work Instruction providing guidance on when a vessel's keel is considered to be laid or the vessel is at a similar stage of construction. This guidance is intended to address law and regulations that refer to when a vessel is "new" or "existing," "built," or "constructed." The Work Instruction, "Determinations for a Vessel's Keel Laid Date or Similar Stage of Construction," CVC-WI 015(1), was published on August 27, 2019, and is available [here](#).

BACKGROUND

U.S. law and regulation often refers to new or existing vessels or when a vessel is built or constructed to determine the applicability of newer construction, safety, and environmental standards. The definitions of these terms invariably discuss the vessels' keel laid date or similar stage of construction. However, there has historically been scant guidance addressing when a vessel's keel is considered laid or when a vessel can be considered at a similar stage of construction and how these terms should be applied for different regulatory purposes.

The Coast Guard has identified issues in the past with undefined structural members being placed in a shipyard without vessel construction plans in place or even intent to build a specific vessel to act as a regulatory placeholder. This is particularly a problem in the period before a newer, more stringent standard will come into effect, and shipbuilders or other companies seek to claim a keel laid date before a new standard takes effect by taking some action to start the building of a vessel with no firm planned completion date.

ANALYSIS

The Work Instruction states that the Coast Guard will interpret the keel laid date as when the keel in question becomes a structure adequate for serving as a keel for a specific identifiable vessel. The keel structure must be capable of "serving as a primary centerline strength member running longitudinally stem to stern along the bottom of a ship around which the hull of the vessel will be built." Importantly, there must also be in existence verifiably dated structural drawings and plans for a specific vessel that will use the keel and which identifies the keel and exact keel

length that has been laid. Only when both the keel and vessel plans for that keel exist can the keel laid date be declared.

If a vessel is not being traditionally constructed from the keel up and regulations permit an equivalent to the keel laid date, the Work Instruction outlines how to determine when a vessel is in a similar stage of construction for determinations of built or constructed date. A “similar stage of construction” is interpreted as when a prefabricated section or first module of a specific vessel’s hull is built that is comprised of 50 metric tons or at least one percent of the estimated mass of all structural material, whichever is less. Like the keel, the section or module must be accompanied by verifiably dated structural drawings and plans for a specific vessel.

Proof of Keel Laid Date or Similar Stage of Construction

For both date the keel is laid, or similar stage of construction reached, an attestation from the shipyard or surveyor is required stating the date that the keel was laid, or the vessel reached a similar stage of construction. Keel laid date determinations may also be requested from the local Officer in Charge, Marine Inspection (“OCMI”) as additional assurance.

In the event that a keel that had already been declared laid will be used for a different vessel than originally intended on the keel laid date, the OCMI has the discretion to reset the keel laid date. This may result in different construction, safety, and environmental standards being applicable to the vessel.

Progressive Construction Required

Once the keel laid or similar stage of construction date is established, construction of the vessel identified in the vessel plans must progress until completion. The time from the date the keel is laid, or similar stage of construction is reached to completion must be within the normal build timeline for vessels of similar size, type, and complexity.

Thus, a shipyard may not have multiple vessels with established keel laid dates waiting to be built. Absent delays that are out of control of the builder, construction must progress continuously once the keel is laid or similar stage of construction reached.

Relationship with Other Laws and Regulations

A vessel’s keel laid date determines applicability of a host of Coast Guard vessel construction, safety, and environmental standards. Environmental Protection Agency (“EPA”) regulations also refer to a vessel’s keel laid date to determine the vessel’s model year and engine requirements. It is unclear whether the Coast Guard’s Work Instruction guidance will be adopted by EPA for these determinations. Finally, a vessel’s keel laid date impacts applicability of international regulations, such as the International Convention for the Safety of Life at Sea (“SOLAS”) and the International Convention for the Prevention of Pollution from Ships (“MARPOL”). The Coast Guard’s interpretations outlined in the Work Instruction are largely consistent with other U.S. and international regulations, though they do impose stringent planning and construction progression requirements.

CONCLUSION

Shipyards and prospective vessel owners and operators must take care to plan vessel construction details and timelines carefully to ensure that the Coast Guard interprets the vessel’s date of keel laying or reaching a similar stage of construction as expected and avoid uncertainty and surprises with respect to applicable regulations.

For more information, please contact:

Jonathan K. Waldron
202.772.5964 | waldron@blankrome.com

Dana S. Merkel
202.772.5973 | dmerkel@blankrome.com