

Customs Proposes Substantial Offshore Industry Jones Act Changes

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On January 18, 2017, Customs and Border Protection (CBP) proposed revising almost 30 Jones Act interpretive rulings going back to 1976. CBP's proposal could have a substantial effect on offshore oil and gas and other operations. Comments are due on February 17, 2017. The proposed effective date for such changes is unclear.

The Jones Act restricts the transportation of "merchandise" between two "points" in the United States to qualified U.S.-flag vessels. When applied outside the territory of the United States (including outside U.S. territorial waters), the Jones Act applies by virtue of the Outer Continental Shelf Lands Act (OCSLA) as amended. OCSLA generally extends U.S. federal jurisdiction beyond state waters to devices, structures, etc. permanently or temporarily affixed to the seabed on the U.S. outer continental shelf when placed there in connection with defined purposes.

Because the application of the Jones Act to offshore operations can be unclear and complicated, as are other customs laws and requirements, CBP maintains a process whereby affected persons can seek an interpretive ruling in advance of engaging in certain activity to ensure that such activity is in accord with CBP's interpretation of the law. Such rulings once issued are available on CBP's website in its CROSS system.

One exception to the Jones Act is for the carriage between two U.S. points of "vessel equipment," which has not been considered "merchandise" as defined in the Jones Act. CBP has relied on a 1939 definition of "vessel equipment" which provides that the term "includes articles necessary and appropriate for the navigation, operation or maintenance of a vessel..." Over time, CBP has issued numerous rulings interpreting this definition including determining that "vessel equipment" included items "essential to the mission of the vessel."

This became controversial culminating in a ruling in 2009 which determined, consistent with prior rulings, that a sub-sea assembly (sometimes referred to as a "Christmas Tree") was vessel equipment when transported by a construction vessel which had as its purpose the installation of such equipment. Certain industry participants argued that CBP had adopted an overly broad interpretation of "vessel equipment."

Apparently, as a result of those arguments, the sub-sea assembly ruling was first issued and then withdrawn following a CBP public proposal to revoke or revise a number of vessel equipment related rulings. In that instance, the docket filled with strongly held views from both sides and CBP appeared to abandon the effort. The January 18, 2017, notice resumes that effort.

Specifically, CBP is proposing to modify significantly a 1976 ruling relating to an offshore construction vessel's operations which in turn will affect a number of rulings which relied on the 1976 decision. CBP is also proposing revising its views of what constitutes "vessel equipment" that would affect another ten rulings and would appear to pare back significantly the "vessel equipment" exception to the Jones Act. As almost 30 long-standing interpretations may change, this could have a substantial effect on offshore vessel operations.

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