

## Significant Jones Act Changes Affecting Offshore Industries Go into Effect



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On December 11, 2019, U.S. Customs and Border Protection finalized changes to Jones Act interpretations which will go into effect for “merchandise” transported after February 17, 2020. Because the Jones Act restricts certain offshore activities to qualified U.S.-flag vessels, it can have a significant bearing on both offshore oil and gas and offshore renewable project costs and timing.

The Jones Act restricts the transportation of “merchandise” between two “points in the United States” to qualified U.S.-flag vessels owned and operated by U.S. citizens absent an exception. Similar laws apply to the transportation of “passengers” as well as dredging, fishing and towing in defined U.S. waters. A “point in the United States” is any place in U.S. physical territory and can include any man-made object, such as a drill rig or turbine installation vessel, attached permanently or temporarily to the U.S. outer continental shelf for defined purposes.

The December CBP Notice made substantial changes to prior interpretations of an exception to “merchandise” for “vessel equipment” and on restrictions of incidental foreign vessel movements engaged in offshore lift operations. Because the December CBP Notice makes substantial changes to prior interpretations, CBP also emphasized that it will decide specific applications of the Notice through the issuance of individual rulings as it has in the past. The new general guidance is as follows.

*Vessel Equipment.* With regard to the definition of “vessel equipment,” CBP retained a 1939 definition which defined equipment to mean “portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel . . . .”

CBP added that “all articles or physical resources serving to equip the vessel, including the implements used in the vessel’s operation or activity” are “vessel equipment” and that items “necessary and appropriate for the operation of the vessel” “are those items that are integral to the function of the vessel and are carried by the vessel.”

CBP indicates that such items “may include those items that aid in the installation . . . of wells, seafloor or subsea infrastructure, flow lines, and surface production facilities.” CBP further noted “vessel equipment” need not be “owned by the vessel” and need not be “related to vessel navigation functions.”

Finally, CBP emphasized that a factor it will consider as to whether an item is “vessel equipment” is whether it is returned to the vessel after the vessel completes an operation, although this factor “is not a sole determinative

factor.” CBP also emphasized that its prior rulings remain valid permitting foreign vessels to lay cable or pipe (including potentially risers) between two “points in the United States” based on a “paid out, not unladen” analysis.

In revising prior rulings, CBP indicates that pipeline burial tools, certain umbilicals and remotely operated vehicles (ROVs) are examples of items that can be “vessel equipment.” CBP demurred based on lacking sufficient facts on whether pipe connectors, carousels, and reels, among other things, can be “vessel equipment.”

*Lifting Operations.* The December CBP Notice also revised prior interpretations regarding short vessel movements by foreign crane vessels where those movements arguably formed a part of the overall transportation of merchandise between two “points in the United States.” In the Notice, CBP adopted “a revised interpretation of offshore ‘lifting operations’ to clarify that certain lateral movements do not constitute transportation under the Jones Act.”

CBP defined such “lifting operations” to include “the lifting by cranes, winches, lifting beams, or other similar activities or operations, from the time that the lifting activity begins when unloading from a vessel or removing offshore facilities or subsea infrastructure until the time that the lifting activities can be safely terminated in relation to the unloading, installation, or removal of offshore facilities or subsea infrastructure.” And such “lifting operations” encompass any “vertical or lateral movement necessary . . . to safely place in position or remove an item from the vicinity of an existing structure, facility or installation.”

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Jones Act Vessels

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