



## U.S. Customs Issues Significant Guidance Regarding Offshore Wind Installation

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On February 4, 2021, Customs and Border Protection issued significant guidance regarding the operations of foreign offshore wind installation vessels in U.S. waters. The ruling was made public on February 19.

The U.S. “Jones Act” restricts the transportation of “merchandise” between two “points in the United States” to qualified U.S.-flag vessels. Related laws encompass the transportation of “passengers,” as well as “dredging” and “towing” in defined U.S. waters. On January 1, 2021, the U.S. Congress confirmed that these laws apply to offshore renewable energy projects.

Primarily because of prior oil and gas rulings, it has been commonly understood that a stationary foreign installation vessel which receives foundations or tower components from a U.S. port via a coastwise qualified U.S.-flag vessels and installs them while stationary is lawful activity. What has not been clear is whether tools and expendable items utilized by the installation vessel as it moves from one offshore work site to another are encompassed by the term “merchandise” and whether personnel not part of the installation vessel’s marine crew are encompassed by the term “passengers.”

One exception to the term “merchandise” is for “vessel equipment.” October 23, 2019 CBP reaffirmed and updated the 1939 definition of “vessel equipment” which included “portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board.” The 2019 guidance indicated that this meant “all articles or physical resources serving to equip the vessel, including the implements used in the vessel’s operation or activity.” Items included “are those items that are integral to the function of the vessel and are carried by the vessel.” Appropriate “functions” including “installation” of “surface production facilities.”

The February 4 rulings indicate that all of the following carried by the installation vessel between work sites on the U.S. outer continental shelf are “vessel equipment” under the 2019 guidance and therefore can be lawfully transported by a foreign vessel --

1. “Bolt handling tools (e.g., spanners and sockets, hydraulic hoses and pumps/powerpacks, toolboxes, and bolt grippers);
2. Hand tools (e.g., torque wrenches, sockets, screwdrivers, cordless drills, pliers, clippers);

3. Containers and bags (e.g., cleaning products, lifting bags, lashing straps, waste bags);
4. Personal protection equipment (e.g., gloves, glasses, safety vests, hard hats, first aid equipment, harnesses and fall-protection devices, carabiners and other light connecting devices, ropes, and rope bags);
5. Hand washing material, rags and cleaning clothes, bags for dirty rags, biohazard bags, and other single-use items; and
6. Food and drinks for the installation crew.”

The February 4 ruling cautioned that whether an article is “merchandise” or “vessel equipment” is a “fact-specific, case-by-case determination.” Moreover, CBP regulations indicate that only a ruling requester is entitled to rely on a ruling

The February 4 ruling also addressed the issue of whether installation-related vessel personnel – such as “supervisors, lifting operations crewmembers, and technical crew (e.g., installation technicians, high voltage technicians)” – are “passengers” and determined that they are not. A foreign installation vessel can therefore, in accordance with the February 4 ruling, transport personnel between offshore work sites without violating U.S. coastwise laws.

The recent ruling is limited to assessing the application of certain U.S. coastwise laws and does not address tax, employment, immigration and other issues which can affect the operations of a foreign vessel working in U.S. waters.

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