

## Customs Withdraws Notice of Substantial Offshore Industry Jones Act Changes

MAY 10, 2017

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 had a substantial effect on offshore oil and gas and other operations. Comments were due on April 18, 2017. On May 10, 2017, CBP withdrew the proposal.

CBP indicated in its May 10 Notice that "based on the many substantive comments CBP received, both supporting and opposing the proposed action, and CBP's further research on the issue, we conclude that the Agency's notice of proposed modification and revocation of the various ruling letters relating to the Jones Act should be reconsidered."

The proposal related to the Jones Act which 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 U.S. territorial 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 web site 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 followed by 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, first as to the administrative proposal and then as to a potential follow-on rule making project.

The January 18, 2017, notice resumed that effort, and again a number of comments both strongly in favor and opposed to the proposal were filed from a wide array of industry persons. The May 10 Notice does not indicate whether the proposal will resurface either in the same form or potentially as a rule making project as occurred in 2009.

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