

U.S. Department
of Transportation
United States
Coast Guard



Commander
8th Coast Guard District
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1534/16700
14 May 1997

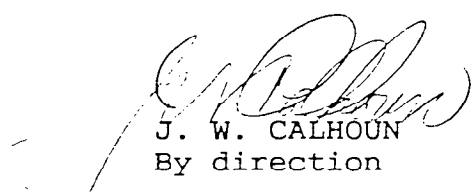
From: Commander, Eighth Coast Guard District
To: Distribution

Subj: COASTWISE TRADE DETERMINATION

Ref: (a) CCGD8(mvs) ltr 1534 of 10 April 1997

1. Enclosure (1) is provided as a follow-up to reference (a) which indicated that we would seek a ruling from Customs regarding Jones Act applicability to a service vessel receiving paint and other materials from shore.

2. The enclosed Customs ruling points out that the Jones Act applies only to the carriage of U.S. goods between U.S. ports. A foreign vessel can provide any service to one or more U.S. ports if that service does not include the transport, loading and off-loading of U.S. goods. For the case of a painting service, they can paint one or more platforms if they carry their own paint and sandblasting grit. If they get the paint from the platform or another U.S. port, they cannot move around the platform while painting or sandblasting. In other words, they can take a load of paint from an OSV and spray it onto the platform if they remain stationary (i.e., they took on and off-loaded U.S. goods but did not transport them). Once they move from one location at the platform to another, they would be in violation of the Jones Act because they would have loaded, off-loaded and transported U.S. goods between U.S. ports. They can, however, reasonably perform the service using U.S. provided materials if the paint is delivered to the platform. In this case, they must affix their position under the platform and load only enough paint to be sprayed from their current location. As long as they discharge all the paint they loaded before moving to another position around the platform, they will not be in violation of the Jones Act.


J. W. CALHOUN
By direction

Encl: (1) Department of Treasury, U.S. Customs Service ltr
VES-3/3-02-RR:IT:EC of April 16, 1997

Dist: All Gulf Region MSOs, MSDs and MSU



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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

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VES-3/3-02-RR:IT:EC
113905 GOB

Wayne D. Gusman
Commander, U.S. Coast Guard
Acting Chief
Marine Safety Division
501 Magazine Street
New Orleans, LA 70130-3396

Dear Commander Gusman:

This is in response to your letter of April 11, 1997.

You ask:

If a foreign flagged vessel engages in the service of sand blasting and painting a platform in the Gulf of Mexico, and it never moves from that platform to work on another platform, is the vessel violating the Coastwise Trade Laws of the United States? Please consider the scenario in which the vessel brings the paint and sand blasting grit from a foreign port and the case in which these materials are received from a U.S. port via a U.S. flag vessel.

One of the enclosures with your April 11, 1997 letter is our Ruling 227081 dated July 10, 1996. That ruling correctly states our position with respect to the application of the coastwise laws to the facts presented in that ruling request.

Statutory and Regulatory Framework

The following is the basic statutory and regulatory framework with respect to certain of the coastwise laws. This framework was also stated in Ruling 227081.

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

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46 U.S.C. App. 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

19 U.S.C. 1401(c) defines "merchandise," in pertinent part, as follows: "goods, wares, and chattels of every description..."

The coastwise law applicable to the carriage of passengers is found in 46 U.S.C. App. 289 and provides that:

No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

Section 4.50(b), Customs Regulations (19 CFR 4.50(b)) states as follows:

A passenger within the meaning of this part is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); "OCSLA"), provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

Our Response to Your Questions

As stated above, the coastwise laws apply to transportation, i.e., the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. 19

CFR 4.80b(a) states, in pertinent part: "A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point..."

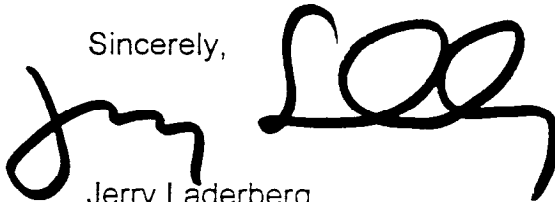
As stated in Ruling 227081, the transportation of merchandise (i.e., sandblasting materials, paint, etc.) from a U.S. port to a platform on the outer Continental Shelf may not be accomplished by a non-coastwise-qualified vessel. Such transportation may be accomplished by a coastwise-qualified vessel.

The mere act of sand blasting and/or painting, whereby the vessel at issue remains stationary and does not move except for incidental shifting in the water, is not transportation, and thus is not the coastwise transportation of merchandise

The coastwise laws do not apply to the transportation of merchandise between a foreign port and a coastwise point such as a platform on the outer Continental Shelf

Please contact Gerry O'Brien or the undersigned at 202-482-6940 if we may provide any additional information.

Sincerely,



Jerry Laderberg
Acting Chief,
Entry and Carrier Rulings Branch

OPTIONAL FORM 99 (7-90)

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