Thomas A. Allegretti
President & CEO

801 North Quincy Street
Suite 200
Arlington, VA 22203

tallegretti@americanwaterways.com
703.841.9300

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U.S. Customs and Border Protection
Office of Trade, Regulations and Rulings
ATTN: Cargo Security, Carriers and Restricted Merchandise Branch
Lisa L. Burley, Branch Chief
90 K Street, NE, 10th Floor
Washington, DC 20229-1177

RE: Proposed Modification and Revocation of Ruling Letters Relating to CBP's Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points

Dear Ms. Burley:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's more than 300 member companies own and operate barges and towing vessels on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet.

The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to review and comment on the proposed modification and revocation of ruling letters relating to U.S. Customs and Border Protection's application of the Jones Act.

Vessel Equipment

Beginning in 1976 with ruling letter HQ 101925 (Oct. 7, 1976), numerous CBP rulings have wrongly broadened the scope of items that could be considered "vessel equipment" and thus transported on non-Jones Act-compliant vessels. CBP is correct in now proposing to modify the eight identified ruling letters issued between 1976 and 2004 and to revoke the five identified rulings from 2000 to 2006 that are contrary to those modifications.

Importantly, the proposed actions restore the consistent approach to delineating "vessel equipment" that was first used in Treasury Decision 49815(4) (Mar. 13, 1939). That ruling relied on the Tariff Act of 1930, codified at 19 U.S.C. § 1309, to define equipment as "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." While ruling letters are not precedential and only apply to the specific facts presented by a requester, CBP is correct in noting that ruling letters provide important guidance to CBP's field units who are charged with enforcing the Jones Act. Applying consistent definitions and analysis in individual ruling letters, as the proposed modifications and revocations related to vessel equipment do, will better support CBP's field units in consistently carrying out their enforcement duties.

However, while CBP is correct in modifying those eight ruling letters to explain, generally, that determining whether items are vessel equipment or merchandise "depends on the nature of the item and the facts associated with the operation of the vessel"[1] and must be "determined on a case-by-case basis,"[2] it is wrong to attempt to create an entirely new definition of vessel equipment on page 17 of the *Customs Bulletin and Decisions* notice. There, CBP states that it interprets vessel equipment "to include all articles or physical resources serving to equip the vessel, including the implements used in the vessel's operation or activity." CBP then provides a listing of 16 various vessel operations and activities and categorically states that items integral to the completion of those functions are vessel equipment. That unnecessarily prescriptive listing undermines the case-by-case analysis utilized in the modified ruling letters.

CBP should therefore remove the new definition created in the text of the notice and instead adhere to the analytical framework established in the modified ruling letters that require case-by-case determinations of whether items are being used as vessel equipment or transported as merchandise.

Lifting Operations

46 U.S.C. § 55102 clearly states that non-Jones Act-compliant vessels:

> "may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply…"

It is indefensible, then, that CBP would seek to revoke ruling letters HQ H225102 (Sept. 21, 2012), HQ H235242 (Nov. 15, 2012) and HQ H242466 (July 3, 2013) and thereby allow a non-Jones Act-compliant vessel to transport merchandise "a short distance" during lifting operations. Those ruling letters provide a well-reasoned analysis that explains why the confines of existing statute require any transportation—even for "a short distance"—to be conducted by a Jones Act-compliant vessel. The factual situation in both ruling letters acknowledges there is no dispute that the item being moved is merchandise and that the movement is between points to which the coastwise laws apply.

[1] HQ 101925 (Oct. 7, 1976), para. 6, 10; HQ 115185 (Nov. 10, 2000), pg. 4; HQ 115487 (Nov. 20, 2001), pg. 11.
[2] HQ 108442 (Aug. 13, 1986), para. 1, 2, 5, 7.

Based on those acknowledgements, CBP can arrive at no conclusion other than a determination that the movement must be conducted by a Jones Act-compliant vessel. CBP's stated interpretation on page 21 of the notice that "certain lateral movements [during lifting operations] do not constitute transportation under the Jones Act" is an irreconcilable violation of the statutory mandate that the requirements of the Jones Act apply to "any part of the transportation of merchandise."

Worse, CBP then attempts to justify its violative interpretation by claiming that the lateral movement of lifted merchandise is not transportation but is instead part of the lifting operation itself. That stands in opposition to the very Merriam-Webster definition of "lift" that CBP relies upon, "to raise from a lower to a higher position." Nothing in that definition supports CBP's assertion that lifting encompasses "the initial vertical movement of an item from a lower position to a higher position, and any additional vertical or lateral movement…".

Similarly, CBP's newly created justification for exempting lateral movements from the Jones Act for "safety and practical concerns" has no basis in statute and is at opposition with 46 U.S.C. § 55102. HQ H242466, which was submitted by the same ruling letter requester and contains a nearly identical operational situation as HQ H225102 and HQ H235242, provides a clear example of how the lifting operation could be performed without the lateral movement CBP now attempts to endorse for safety and practicality justifications. In that ruling letter, the requester presented an operation where a topside would be lifted by a stationary lifting vessel that rotates 90 degrees on its axis, then unladed on a SPAR connected to the outer continental shelf that had been retracted.

Since CBP's justification for promulgating this new interpretation of the Jones Act's applicability to lateral movements violates the clear language of 46 U.S.C. § 55102, CBP should withdraw its proposed revocation of ruling letters HQ H225102, HQ H235242 and HQ H242466, as well as its interpretive text presented in the notice.

Conclusion

AWO supports the proposed modifications and revocations of the 13 ruling letters related to vessel equipment but opposes CBP's interpretive language on page 17 of the notice that undermines those changes. Additionally, AWO firmly opposes both the proposed revocation of the three ruling letters related to lifting operations and CBP's justification for those proposed revocations as a violation of existing statute.

Thank you for the opportunity to respond to CBP's proposed modification and revocation of ruling letters relating to application of the Jones Act. We would be pleased to answer any questions or provide further information as you see fit.

Sincerely,

Thomas A. Allegretti
President & CEO