THE NEW JADE: ENERGIZING JONES ACT ENFORCEMENT

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By: Michael F. Scanlon

The U.S. Customs and Border Protection (CBP) recently announced the creation of a new enforcement division in the New Orleans Field Office focused solely on the Jones Act: The National Jones Act Division of Enforcement (JADE). The establishment of JADE signals that enforcement of the Jones Act and other domestic coastwise laws will be a priority for the agency. JADE will support coordinated enforcement of U.S. coastwise laws across CBP's various field offices, helping to ensure more consistent and more thorough application of the coastwise laws.

AN OVERVIEW OF THE JONES ACT AND DOMESTIC COASTWISE LAWS

Generally, domestic coastwise laws require that the movement of cargo and passengers between points in the United States be performed on vessels constructed in, documented under the laws of, and owned by citizens of the United States. The American crewing requirements are triggered by the documentation requirements. Five basic coastwise laws govern cargo, passengers, towing, dredging, and fishing within the United States. Collectively, these laws are commonly referred to as "the Jones Act" and are codified in chapter 551 of title 46, United States Code.

The CBP is responsible for enforcing and administering the Jones Act and other coastwise laws and regulations. Jones Act violations can result in the forfeiture of the merchandise or a monetary penalty up to the value of the merchandise.[1] The Regulations and Rulings Division in CBP's Office of International Trade is also responsible, if requested, for issuing advance rulings on whether proposed movements of merchandise comply with the coastwise laws.

JADE'S MISSION

JADE's mission is "to assist CBP and industry partners" on coastwise matters "with the goal of being a clearinghouse for all coastwise trade issues." JADE is expected to partner with industry stakeholders on Jones Act enforcement and advocate for the U.S. domestic trade. For example, JADE's subject-matter expert staff will be available to make outreach presentations to industry partners on coastwise trade issues.

JADE is soliciting suspected Jones Act violations through the e-Allegation portal, and interested parties are encouraged to contact JADE with coastwise questions and concerns. A primary objective in consolidating this function within CBP is to ensure more consistent application of the Jones Act across CBP's field offices.

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CBP field office directors will continue to handle enforcement processes and be responsible for assessing penalties for Jones Act violations. JADE will coordinate Jones Act enforcement actions, including inquiries, investigations, and guidance, throughout the nation to provide more consistency on coastwise matters.

Formal ruling requests seeking guidance from CBP on the application of the Jones Act will continue to be submitted to Regulations and Rulings. These letter rulings will continue to be posted on the Customs Rulings Online Search System (CROSS), a searchable database of CBP rulings.

THE REASON FOR JADE

The CBP's decision to establish JADE was likely impacted by several recent events. High-profile cases of Jones Act violations, such as the $15 million fine against Escopeta Oil Co., resulted in calls for increased and more standardized enforcement against Jones Act violators. Congress has also recently called on the CBP to enhance its enforcement of the Jones Act.

For instance, the Consolidated Appropriations Act of 2016's explanatory statement "urged" the CBP "to levy penalties, as appropriate, for previously documented violations of the Jones Act; establish specific timeframes for internal review and actions; continue working with the Offshore Marine Service Association to investigate potential violations; and dedicate adequate resources to vigorously enforce the Jones Acton the Outer Continental Shelf."[2]

The Senate report for the Department of Homeland Security Appropriations bill for FY 2017[3] also includes language on the need for enhanced enforcement of the Jones Act, especially on the Outer Continental Shelf. The Appropriations Committee report states that the "CBP needs to take aggressive enforcement action and issue meaningful penalties to deter further [Jones Act] violations" and "again directs CBP to continue to track Jones Act violations and make information available to the public and the Committees on a quarterly basis about specific Jones Act violations."[4] The Committee also calls on the CBP to "continue working with the U.S. flag industry to investigate potential violations, and dedicate adequate resources to vigorously enforce the Jones Act on the Outer Continental Shelf."[5]

AS JADE GEARS UP, STAKEHOLDERS SHOULD ENGAGE

The CBP is currently in the process of organizing and staffing JADE, which will be led by Mike Hebert, who previously served as CBP's Port Director for the Port of Morgan City. As the primary coordinating division within CBP on Jones Act matters, JADE will play an important role on enforcement of domestic coastwise laws.

Stakeholders should take advantage of this opportunity by engaging with JADE to better understand Jones Act enforcement and ensure compliance with U.S. coastwise laws.

NOTES:

[1] *See* 46 U.S.C. § 55102(c); 19 C.F.R. § 4.80(b).

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[2] 161 Cong. Rec. H10,161 (daily ed. Dec. 15, 2015) (Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding House Amendment No. 1 to the Senate Amendment on H.R. 2029, Consolidated Appropriations Act, 2016).

[3] S. 3001, 114th Cong. (2016).

[4] S. Rep. No. 114-264, at 44 (2016).

[5] *Id.*

KEY CONTACTS



DARRELL L. CONNER
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON, DC
+1.202.661.6220
DARRELL.CONNER@KLGATES.COM



MICHAEL F. SCANLON
LEAD PRACTICE AREA LEADER - POLICY AND REGULATORY

WASHINGTON, DC
+1.202.661.3764
MICHAEL.SCANLON@KLGATES.COM

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