

Bureau of Customs and Border Protection

General Notices

19 CFR Part 123

Advance Electronic Presentation of Cargo Information for Truck Carriers Required to be Transmitted through ACE Truck Manifest at Ports in the States of Michigan and New York

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to the Bureau of Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous notice, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry. This notice announces that at all land border ports in Michigan and New York, truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Michigan and New York will be required to transmit the advance information through the ACE Truck Manifest system effective May 24, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations provid-

ing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the **Federal Register**: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006); 71 FR 77404 (December 26, 2006) and 72 FR 7058 (February 14, 2007).

CBP continues to test ACE at various ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006, (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico, as well.

ACE Mandated at Land Border Ports of Entry in Michigan and New York

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States at any land border port of entry in the states of Michigan and New York will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at a port of entry in Michigan and New York as of May 24, 2007.

Compliance Sequence

CBP will be publishing subsequent notices in the **Federal Register** as it phases in the requirement that truck carriers utilize the

ACE system to present advance electronic truck cargo information at other ports. ACE will be phased in as the mandatory EDI system at the ports identified below in the sequential order in which they are listed. The sequential order provided below is somewhat different than that announced in the October 27, 2006, notice. Although further changes to this order are not currently anticipated, CBP will state in future notices if changes do occur. In any event, as mandatory ACE is phased in at these remaining ports, CBP will always provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will be phased in, listed in sequential order, are as follows:

1. The remaining land border ports in the state of North Dakota and all land border ports in the state of Vermont.
2. All land border ports in the states of Idaho and Montana.
3. All land border ports in the states of Maine, New Hampshire, and Minnesota.
4. All land border ports in the state of Alaska.

Dated: February 20, 2007

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, February 23, 2007 (72 FR 8109)]

PROPOSED COLLECTION; COMMENT REQUEST

African Growth and Opportunity Act Certificate of Origin

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the African Growth and Opportunity Act Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: African Growth and Opportunity Act Certificate of Origin

OMB Number: 1651-0082

Form Number: None

Abstract: The collection of information is required to implement the duty preference provisions of the African Growth and Opportunity Act (AGOA) to provide extension of duty-free treatment under the Generalized System of Preferences (GSP) to sensitive articles normally excluded from GSP duty treatment. It also provides for the entry of specific textile and apparel articles free of duty and free of any quantitative limits to the countries of sub-Saharan Africa.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses.

Estimated Number of Respondents: 440

Estimated Time Per Respondent: 23 hours

Estimated Total Annual Burden Hours: 10,400

Estimated Total Annualized Cost on the Public: N/A

Dated: February 12, 2007

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Group.*

[Published in the Federal Register, February 20, 2007 (72 FR 7771)]

PROPOSED COLLECTION; COMMENT REQUEST

United States-Caribbean Basin Trade Partnership Act

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before April 23, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C., 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the

burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States- Caribbean Basin Trade Partnership Act

OMB Number: 1651-0083

Form Number: CBP-450

Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses.

Estimated Number of Respondents: 440

Estimated Time Per Respondent: 42.5 hours

Estimated Total Annual Burden Hours: 18,720

Estimated Total Annualized Cost on the Public: N/A

Dated: February 12, 2007

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Group.*

[Published in the Federal Register, February 20, 2007 (72 FR 7770)]

19 CFR PART 177

MODIFICATION OF RULING LETTER RELATING TO THE COASTWISE TRANSPORTATION OF MERCHANDISE PURSUANT TO 46 U.S.C. § 55102

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of ruling letter relating to the coastwise transportation of merchandise pursuant to 46 U.S.C. § 55102.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is modifying a ruling letter pertaining to the coastwise transportation of merchandise pursuant to 46 U.S.C. § 55102. Notice of the proposed action was published in the *Customs Bulletin* on January 3, 2007. Three written comments were received in response to the notice.

EFFECTIVE DATE: This action is effective May 6, 2007.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Cargo Security, Carriers, and Immigration Branch, (202) 572-8792.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin* on January 3, 2007, proposing to modify HQ 115099 dated September 27, 2000, which involved the coastwise transportation of mer-

chandise pursuant to 46 U.S.C. § 55102. Three written comments were received in response to the notice. All three commenters support the modification of HQ 115099, as proposed.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 115099 based upon the analysis set forth in HQ W116737, attached.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

DATED: February 16, 2007

VIRGINIA L. BROWN,
Director,
Border Security and Trade Compliance Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ W116737
February 16, 2007
VES-3-15-RR:BSTC:CCI W116737 GOB
CATEGORY: Carriers

GEORGE H. ROBINSON, JR., ESQ.
LISKOW & LEWIS
822 Harding Street
P.O. Box 52008
Lafayette, Louisiana 70505-2008

RE: HQ 115099 Modified; Mobile Offshore Drilling Unit; Coastwise Trade;
Outer Continental Shelf; 43 U.S.C. § 1333(a); 46 U.S.C. § 55102

DEAR MR. ROBINSON:

This letter is with respect to HQ 115099 dated September 27, 2000, issued to you on behalf of Amoco Production Company ("Amoco") and BP Exploration & Oil Inc. ("BPX") (collectively referred to as "BP Amoco"), regarding their proposed use of the foreign-flag mobile offshore drilling unit, DISCOVERER ENTERPRISE (the "drill ship"), to conduct oil and gas well drilling, testing, completion, unloading and clean-up activities at multiple prospective sites in the deep water of the Gulf of Mexico on the Outer Continental Shelf (OCS). We have reviewed HQ 115099 and have determined that it should be modified because the first holding therein is incorrect. Because the second holding of HQ 115099 is correct, we do not address that subject here.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 115099, as described below, was published in the *Customs Bulletin* on January 3, 2007.

Three written comments were received in response to the notice. All three commenters support the modification of HQ 115099, as proposed.

FACTS:

Amoco and BPX are the Minerals Management Service designated operators in numerous blocks in the deepwater Gulf of Mexico, on the OCS. The plans for drilling and preparing such blocks for long term production may be summarized as follows.

BP Amoco plans to use the foreign-built and flagged drill ship in the operation, because there is only one U.S.-built and flagged drilling vessel capable of drilling in the prospect's water depths, which range from approximately 5,480 feet to 6,270 feet.

The drill ship will not call at any port of the United States or place within the jurisdiction of the customs laws of the United States other than as noted below.

The drill ship is totally dynamically positioned, and no anchors, chains, or cables will be deployed in the seabed to hold the vessel in position at any time during the operation. The dynamic positioning system consists of the use of electronically controlled (propeller driven) thrusters to hold the drill ship on station during operations.

The respective drill sites will be marked for direction of the drill ship to the drill site by an array of "transponders" which will be temporarily installed. The array consists of five acoustic transponders (commonly referred to as COMPATT'S) that are placed in a star-shaped pattern at a distance about 35% of the water depth from the well location. Each transponder assembly consists of 200 pounds of lead anchor, 20 feet of hemp rope and the transponder (eight inches in diameter by 30 inches long) with a 20 inch cube float around the cylinder. The assembly is installed by a remote operated vehicle (ROV) which swims down and places the assembly at the appropriate location on the seabed. The ROV is considered part of the drill ship's equipment and gear necessary to fulfill its exploration and production mission. All of this equipment will be fixed on the drilling ship upon arrival at each prospective site.

The transponders communicate with the dynamic positioning system on the drill ship to initially guide it onto the drill site; thereafter the transponders serve to communicate with the dynamic positioning system to maintain the vessel on station.

When the drill ship arrives at the first drill site on the OCS, it will be transporting only members of its regular complement, those personnel necessary for the routine functioning of the unit, including crew, industrial personnel, general maintenance and support personnel, and only legitimate equipment, stores and supplies for use in its nautical and drilling operations. The drill ship is equipped with the capability for "dual-activity" drilling, which allows for drilling tasks associated with a single well to be accomplished in a concurrent rather than a sequential manner, by utilizing two complete drilling systems under a single derrick aboard the rig. To permit dual-activity capability, the drill ship will be equipped with two identical drilling systems which will possess a rotary table, complete set of travelling gear, a top drive, draw works, and a motion compensator.

At the initial drill site, and each subsequent drill site, the drill ship will drill and possibly test a well, leaving a subsurface well-head approximately

ten feet tall. The drill ship will have an extended well-testing capability, allowing the unit to store up to 120,000 barrels of hydrocarbons, produced during testing, in tanks in the hull.

Additionally, it is anticipated that the drill ship will also produce by-products of the produced hydrocarbons. Such by-products basically consist of produced water that has been separated aboard the drill ship from the merchantable hydrocarbons but with an oil content in excess of EPA maximum volume for discharge overboard. The produced water will also be stored aboard the drill ship in separate tanks.

After completion of planned well operations at a drill site, the vessel plans to move to other described drill sites on the OCS for the purpose of drilling other wells, and upon arrival at those drill sites, there will be no installation or other devices or artificial islands for developing or producing resources, other than the transponder array. The transponder array will be removed after the drill ship departs each drill site, and another transponder array will be temporarily set in place at the next drill site. Subsequent to completion of planned well operations, when the drill ship moves from the initial drill site it will be carrying produced hydrocarbons and produced water in its storage tanks.

The drill ship will not be transporting any passengers, or any other equipment and materials except as noted above. The same will apply to the vessel when it moves from drill site to drill site on the OCS. In the event that supplies or personnel must be mobilized from the United States to the drill site, BP Amoco will utilize coastwise-qualified vessels.

BP Amoco anticipates that once the drill ship's hull reaches a sufficient quantity of produced hydrocarbons and produced water to warrant off-loading, a coastwise-qualified barge will meet the drill ship at a point on the high seas (outside of the territorial sea) to accomplish the task. The material loaded onto the coastwise-qualified vessel will then return to a Gulf Coast area refinery for processing and disposal. The drill ship, at the time of off-loading, will have disengaged from the coastwise point (*i.e.*, the temporarily abandoned well). The drill ship will not transport the produced hydrocarbons or the produced water from one coastwise point to another, specifically including temporarily abandoned well sites.

ISSUE:

Whether the transportation of hydrocarbons and/or produced water by the foreign-flagged drill ship from a coastwise point (*i.e.*, a well which has been drilled and equipped with devices and equipment to produce hydrocarbons, on the OCS, within the Exclusive Economic Zone (EEZ)), to a location on the high seas within the EEZ, for transshipment to a coastwise-qualified barge which subsequently transports that cargo to a different coastwise point, would constitute a violation of 46 U.S.C. § 55102.

LAW AND ANALYSIS:

Title 46, United States Code, § 55102 (46 U.S.C. § 55102, the merchandise coastwise law often called the "Jones Act," recodified by Pub. L. 109-304, enacted on October 6, 2006), 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 one that is coastwise-qualified (*i.e.*, U.S.-built, owned and documented).

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

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. . . ."

The coastwise laws generally apply to points in the territorial sea, 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, in cases where the baseline and the coastline differ. The U.S. EEZ is defined in Presidential Proclamation 5030 of March 10, 1983 (48 FR 10605), as extending outward for 200 nautical miles from the baseline from which the territorial sea is measured.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 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.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

. . . It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. See Customs Service Decisions (C.S.D.'s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985.

In HQ 115099, we stated that the transportation of hydrocarbons and/or produced water by the drill ship from a coastwise point on the OCS to a location on the high seas (*i.e.*, beyond the three-mile territorial sea where there is no attachment for purposes of the OCSLA), where the hydrocarbons

and/or produced water are transshipped to a coastwise-qualified barge which subsequently transports that cargo to a different coastwise point, does not constitute coastwise trade in view of the fact that the point of transshipment is not a coastwise point. Consequently, we stated that the foreign-flag drill ship is not prohibited from engaging in this activity.

We have concluded that this analysis is incorrect. Title 46, United States Code, § 55102 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 one that is coastwise-qualified. The OCS drill site where the hydrocarbons and/or water are produced, and are then laden onto the drill ship, is a coastwise point pursuant to the OCSLA. The hydrocarbons and/or produced water are then transported from that coastwise point by the foreign-flagged drill ship to a coastwise-qualified barge on the high seas (a non-coastwise point) for transshipment. The transportation is completed when the hydrocarbons and/or produced water are subsequently transported by the coastwise-qualified barge to a Gulf Coast area refinery (a second coastwise point). Thus, the hydrocarbons and/or water have been transported from one coastwise point (the OCS drill site) to another (the Gulf Coast refinery), albeit with an intervening transshipment on the high seas. Part of this transportation will be accomplished by the foreign-flagged drill ship, and part will be accomplished by a coastwise-qualified vessel. The part of the transportation which will be accomplished by each of the two vessels is within the scope of 46 U.S.C. § 55102, as that statute applies to “any part of the transportation” between coastwise points. Because the drill ship is not coastwise-qualified, its transportation of the hydrocarbons and/or produced water from the OCS drill site to the coastwise-qualified vessel is violative of 46 U.S.C. § 55102, as it has engaged in part of the transportation of merchandise between coastwise points.

HOLDING:

The transportation of hydrocarbons and/or produced water by the foreign-flag drill ship from a coastwise point (*i.e.*, a well which has been drilled and equipped with devices and equipment to produce hydrocarbons, on the OCS) to a location on the high seas for transshipment to a coastwise-qualified barge, which will then transport the hydrocarbons and/or produced water to a Gulf Coast area refinery, is violative of 46 U.S.C. § 55102, as the drill ship will engage in part of the transportation of merchandise from one coastwise point to a second coastwise point.

EFFECT ON OTHER RULINGS:

HQ 115099 is modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

VIRGINIA L. BROWN,
Director,
Border Security and Trade Compliance Division.

